

RFP APPENDIX 3



BAIFA Express Lane Network

Toll Collection System

Agreement for BAIFA Express Lane Network Toll System Integration & Maintenance

AGREEMENT

between the

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

and

TSI

for the

BAIFA EXPRESS LANE NETWORK TOLL COLLECTION SYSTEM INTEGRATION &
MAINTENANCE

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GLOSSARY OF TERMS

Term	Definition
Account Type	Any of the account types available from and maintained by the FasTrak RCSC. Currently account types include: FasTrak, License Plate, One-Time Payment, and Violation.
Advanced Toll Collection and Accounting System (ATCAS II)	Toll collection and accounting system for all BATA bridges.
Agreement	The written agreement executed by BAIFA and the TSI which sets forth the rights and obligations of both parties in connection with the Scope of Work.
Anomaly	Trip Transaction that the TCS has designated for special tracking due to processing Business Rules.
Automatic License Plate Recognition (ALPR)	System for automatic processing of images using Optical Character Recognition and/or vehicle signature for vehicle identification.
Automatic Vehicle Detection and Automatic Vehicle Classification (AVD/AVC)	A system that is able to automatically detect and separately recognize vehicles traveling through toll lanes as well as automatically classify vehicle types.
Automatic Vehicle Identification (AVI) System	A system consisting of radio frequency antenna(s) and reader equipment installed in a toll lane, along with a compatible transponder mounted in a vehicle, for automatic unique identification of the vehicle upon the electronic read of the transponder as it passes through the Toll Point.
Backhaul Network	The BATA/BAIFA Backhaul Network comprises intermediate links and provides for communications between the Corridors, the primary and secondary Host sites, and the primary and secondary Toll Roadway Operations Center sites.

BAIFA Express Lane Network (ELN)	The Express Lane Network that is operated by BAIFA.
Bay Area Express Lanes System	All express lanes operated by various entities in the Bay Area (including BAIFA) to form one continuous network in the region.
Bay Area Infrastructure Financing Authority (BAIFA)	The Bay Area Infrastructure Financing Authority (BAIFA) is a Joint Powers Authority between the Metropolitan Transportation Commission and the Bay Area Toll Authority, which was created to plan, develop, operate and finance transportation projects, including express lanes.
California Highway Patrol (CHP) Observation Areas	Areas on the corridors located in the center median for use by law enforcement.
California Toll Operators Committee (CTOC)	An organization composed of California's toll facility operators/owners. CTOC is used to indicate when a transponder, license plate number, or accounts is registered through “away” agencies instead of the Bay Area FasTrak RCSC.
Civil Contractor	The Civil Contractor responsible for the construction of the ELN civil infrastructure.
Communications End to End Test	This test is a complete series of tests of the communications media and connectivity conducted before OFIT and each of the Operations Tests.
Corridor	A continuous stretch of the express lane roadway operated by the same operator and containing predefined start and end points.
Corridor Test	The Corridor test shall focus on functionality that could not be tested in previous on-site tests or functionality that changes when a full Corridor exists. This test will include actual vehicles driving to create Lane Transactions in many combinations. It will also include Lane Transactions created in various failure modes.
Day	Means calendar days unless otherwise expressly specified.
Discount	The percentage reduction in the toll rate from the SOV toll rate to the HOV 2 or HOV 3+ toll rates.
Dynamic Message	Electronic signs used to convey timely and important information to

Signs (DMS)	motorists, particularly during emergencies and ongoing activities. Also known as variable message signs and changeable message signs. Also see VTMS.
Dynamic Pricing	A toll rate structure that fluctuates based on traffic conditions to manage congestion through a supply/demand model.
Electronic Toll (ETOL)	A transaction that posts by transponder ID to a FasTrak account maintained by the FasTrak RCSC. The toll amount is deducted from the account's prepaid balance.
Electronic Toll Collection (ETC)	A method of toll collection that is fully electronic by utilizing only toll transponders to collect payment. Includes radio frequency ID-based (RFID) automatic vehicle identification (AVI) technology, as well as dedicated short range communications (DSRC).
End to End Test	To verify all system functionality, especially the ability to interact as specified with external entities through the external interfaces and web portals.
Exception	Lane Transaction which cannot be matched to a Trip Transaction because of lack of information or processing business rules.
Equipment Location Site	A physical location where BAIFA-owned TCS equipment is installed, operated or maintained. Also referred to as "Site."
Factory Acceptance Test (FAT)	To verify that all functional elements of the Toll Collection System (TCS) are present and comply with the requirements of the contract at the TSI's site prior to installation.
FasTrak Regional Customer Service Center (RCSC)	The customer service center and back office system that supports toll accounts, transaction processing, payment processing, image review, violation processing, and customer service for FasTrak customers of BAIFA, BATA and other Bay Area agencies. Also referred to as the Bay Area FasTrak RCSC.
FasTrak Tag/Transponder	The brand name for the physical device that that is mounted to a vehicle for the purpose of toll payment through automatic vehicle identification using Title 21 protocol. Standard FasTrak transponder – A Title 21 compliant transponder for use inside the vehicle.

	<p>External FasTrak transponder – A Title 21 compliant transponder designed for external use. Also referred to as a “bumper tag” since the device is intended to be installed onto the vehicle’s bumper.</p> <p>Switchable FasTrak transponder – A specially-encoded Title 21 compliant transponder that contains a mechanism for a customer to declare the number of occupants in the vehicle in real-time.</p>
FasTrak Account Holder	A FasTrak, License Plate, or One-Time Payment account, registered with the FasTrak RCSC.
Fault Tolerant	Describes a system, network or component designed so that, in the event of a failure, a backup system, network, component or procedure can immediately take its place with no loss of service. Fault tolerance can be provided with hardware, software, physical network connections or provided by some combination.
First Zone Test	To verify proper system operation and functional elements with test vehicles while operating the first installed Zone with Host. This test will focus on Trip Building and Toll Rate Assignment functionality.
Graphical User Interface (GUI)	A software screen and menu representation that allows users to input, retrieve, add, and modify data, and perform actions.
Guaranteed Date	The date by which Milestone delivery is required.
Hardware	Collectively, the physical components of the TCS, including, but not limited to, receivers, transmitters, readers, antenna, coaxial hardline, routers, servers, computers, telecommunications, enclosures, and other similar devices. The term Hardware may also be used collectively to describe the physical aspects of the telecommunications network infrastructure.
High Occupancy Vehicle (HOV)	A vehicle with sufficient passengers to qualify for the HOV discount on the express lanes or the designation for a lane in which a certain number of vehicles is required for use or for discounted tolls.
Host	TCS component that receives and processes lane level data to form Trip Transactions, and supports monitoring and maintenance of the equipment, systems and subsystems of the TCS. The Host includes functionality to assign toll rates, determine pricing, and build Trip Transactions. The Host includes the system and user interfaces with

	BAIFA systems and system and user interfaces with third-party systems.
Image Based Trip Transaction (IBT)	An IBT is any Trip Transaction with which the Host does not associate a valid transponder. The Trip Transactions may post to any Account Type based on the LPN associated with that Trip Transaction.
Image Toll (ITOL)	An Image Based Trip Transaction that posts to a customer's FasTrak account when the FasTrak RCSC associates that license plate number with a FasTrak account.
Interface Control Document (ICD)	A document that defines the file formats and related Business Rules for exchanging or processing data between two or more interfacing systems.
Invoice Account	A RCSC initiated account type in which an invoice is sent to a customer on a periodic basis to collect tolls based on license plate images.
Lane Controller	The component of the Toll Collection System that manages and automates the real-time control of Read Point equipment and receives data from related equipment, systems and sub-systems.
Lane Mode	A Lane Mode is a configuration of the TCS's operational parameters and settings.
Lane Transaction	A uniquely identified record of activity, including transponder and license plate images, created as a result of a vehicle traveling through a Read Point.
License Plate (LP) Account	A customer-initiated account at the FasTrak RCSC that allows payment of tolls electronically through license plate identification. No transponders are issued for License Plate Accounts.
License Plate Toll (LTOL)	A transaction that posts by license plate number and state to a valid License Plate Account at the FasTrak RCSC. The toll amount, plus any applicable transaction fee, is either deducted from the account's prepaid balance or charged to a credit card on file.
Limited Access	Limited Access is when access to/from the express lanes is allowed only at designated locations, typically through at-grade access

	openings that can serve ingress, egress, or combined ingress and egress. Striping or physical barriers prevent movement between the express lane and the adjacent general purpose lanes between access locations. Limited access is designated by a solid double stripe pavement marking.
Metro-E	Common abbreviation for Metropolitan-area Ethernet. Metro-E is used by service providers to connect subscribers to a larger service network or the Internet.
Milestone	Completion of a set of Work for which BAIFA approval is needed in order to receive payment.
One-Time Payment (OTP) Account	A customer-initiated account at the FasTrak RCSC that allows payment of tolls electronically through license plate identification. OTPs are short-term and do not require personal information. No transponders are issued for One-Time Payments.
One-Time Payment Toll (ONETOL)	A transaction that posts by license plate number and state to a valid One-Time Payment account at the FasTrak RCSC. The toll amount, plus any applicable transaction fee, is either deducted from the account's prepaid balance or charged to a credit card on file.
Onsite First Installation Test (OFIT)	To verify proper system operation and functional elements with test vehicles while operating the first installed equipment site with Host. Test objectives are similar to the Factory Acceptance Tests.
Open/Continuous Access	Open/Continuous Access is when access to/from the express lane is not restricted to designated locations. Instead, vehicles are able to enter and exit the express lane at any point. Skip stripe pavement markings designate express lanes with Continuous Access.
Operations Test	To verify the installed operational accuracy, performance, reliability, and audit capability of the Toll Collection System (TCS). The Operations Test is performed after commencement of tolling for each Corridor under live traffic conditions.
Pay-By-Plate	Pay-by-Plate refers to the set of products that support License Plate Accounts, One-Time Payment Accounts, and Invoice Accounts. This should not be confused with the CTOC term 'pay by plate' which refers to FasTrak ITOLs posting to CTOC (Away agency) accounts.

Posting Day	The calendar day on which a Trip Transaction posted to an account at the FasTrak RCSC as reported through the FasTrak RCSC interface.
Qualifying Event	A deliverable or activity required of the TSI to meet an associated Milestone and the requirements thereof as defined by the Agreement.
Read Point	Read Points are locations where the TCS detects vehicles, reads transponders, and captures images in order to create Lane Transactions.
Recovery Schedule	A Project Schedule that has been revised to change the sequencing and/or duration of activities, in order to return the Project Schedule to a condition that will meet the Guaranteed Date(s).
Revenue Day	An accounting period containing transactions with entry points within the 24 hours of a calendar day.
Roadside Network	The Roadside Network is comprised of Corridor communications between tolling elements on the roadside and with the Backhaul Network.
Roadway Operations	Operational activities that manage traffic to maintain maximum performance of the express lanes, monitor express lane activity through user interfaces to the TCS, and respond to incidents and issues using manual controls or system overrides provided through TCS user interfaces.
Secondary Host Site	Fully-functional redundant site to the primary Host site. The Secondary Host Site will be fully equipped with current databases, servers, switches and other equipment to replace the Host in the event of a catastrophic event at the primary Host site.
Segment	A subset of a Corridor between ‘major destinations’ containing several Zones.
Sign Controller	The component of the TCS that controls what is displayed on VTMS panels that broadcast tolling information to motorists and manage communications with the Host.
Site	See “Equipment Location Site.”
Site Commissioning Test	To verify in separate tests that each installation is performed properly, that the equipment and interfaces function properly, and have been

	properly integrated with the Toll Collection System (TCS).
Source Code	The computer programming code (other than binary code) and any procedural code such as job control language, which may be printed out or displayed in human readable form.
Source Code Documentation	All documentation reasonably necessary or desirable to allow for compiling and testing of the source code, including without limitation a list of applicable proprietary software development tools, license(s) to all applicable Intellectual Property, detail on any permitted third party commercially available software used in conjunction with the system (including name, version, sub-version number and release date), documentation on how any permitted third party commercially available software is linked to the system software, and documentation showing the identities of and most current available contact information for one or more qualified programmers who had or have responsibility for the creation of the source code at issue and the methodology such that they can explain the source code and the methodology and otherwise be used as system references.
Switchable Transponder	Any transponder with a mechanism for a customer to declare the number of occupants in their vehicle in real-time.
Synchronous Optical Networking (SONET)	The technology used by Caltrans for trunk communications. SONET is based on time domain multiplexing and requires highly accurate clocks to send data at specific time periods. Since SONET is a transport technology, it allows for transmission of a variety of protocols.
System Acceptance Test	To verify the performance of the entire Toll Collection System (TCS) over a continuous test period. The system-wide System Acceptance Test is performed in a manner similar to the Operations Test.
System Availability	The percentage of time that the TCS and any subsystem, hardware, device, component, or process is able to perform in full accordance with its functional and performance requirements with regard to a particular aspect of its overall operation.
Tag Status File	The file sent from the RCSC to the TCS Host containing the status of all home and CTOC transponders.

Title 21	The specification standard used by the State of California for high speed, open lane electronic toll collection and traffic management applications.
Toll Collection System (TCS)	<p>The complete, functioning, electronic toll system that includes all hardware, software, system and user interfaces, electrical and communications equipment, and various technologies to manage traffic, monitor operations, facilitate toll collection, and report on System Data collected by the TCS.</p> <p>TCS may also refer to an unspecified component or subsystem of the TSI's technical solution that performs a function being identified in the requirements. The TCS may also be referred to as "toll system" or "system" within applicable context.</p>
Toll Roadway Operations Center	Location where BAIFA operators will monitor the ELN operations.
Toll System Integrator (TSI)	The contractor responsible for designing, developing, installing, and testing the TCS.
Tolling Commencement	The day toll revenue collection and operations begin using the TCS provided by the TSI.
Trip	The passage of a vehicle through an express lane Corridor from the point where the vehicle enters the express lane at an authorized entry location until it exits the express lane at an exit location. A Trip may include a single Segment/Zone/Read Point or multiple (but contiguous) Segments/Zones/Read Points.
Trip Building	The process within the TCS at the Host where Lane Transactions are processed to create Trip Transactions in order to charge tolls to vehicles making Trips in the express lane.
Trip Transaction	<p>The package of information formed by the Host identifying a Trip made by a vehicle and the toll assigned to that Trip. The following modifiers can be added to Trip Transactions:</p> <ul style="list-style-type: none"> • Tagged – Trip Transactions associated with a valid FasTrak transponder • Image Based – Trip Transactions with without a valid FasTrak transponder, sent to the FasTrak RCSC with VES images • Rejected - Trip Transactions which the FasTrak RCSC cannot post

	<p>to an account or pursue with a violation notice</p> <ul style="list-style-type: none"> • Posted – Trip Transactions which the FasTrak RCSC posted to an account
Variable Pricing	Variable pricing is a set of toll rates that change depending on the time of day.
Variable Toll Message Sign (VTMS)	An electronic dynamic message sign used along the express lane to display the toll rate at the time of passage through a Read Point.
Vehicle Occupancy Requirement	The number of passengers required to be in a vehicle for it to be eligible for HOV-discounted travel, provided a switchable transponder is present and appropriately declared. The Vehicle Occupancy Requirement is either HOV 2 or HOV 3+ for each Corridor.
Violation Enforcement System (VES)	The system that captures images of vehicle license plates on the facility and associates them with the correct Lane Transactions, for vehicles without a valid transponder.
Violation Notice	A notice issued for failing to pay a toll due by establishing and maintaining a valid transponder- or plate- based account with the FasTrak RCSC. Violation Notices can include one or more transactions.
Violation Toll (VTOL)	A Trip Transaction flagged as an IBT at the Host but converted to an ETC Trip Transaction by the FasTrak RCSC based on a change in the transponder status to ‘valid transponder’ made at the FasTrak RCSC.
Work	All of the services, materials, equipment, and documentation required to be provided by the TSI under the Agreement and in conjunction with the Scope of Work.
Zone	A Zone consists of a set of contiguous Read Points in a single direction of travel with a single toll rate.

**BAIFA EXPRESS LANE NETWORK TOLL COLLECTION SYSTEM INTEGRATION &
MAINTENANCE AGREEMENT**

PROFESSIONAL SERVICES AGREEMENT

Between

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY (BAIFA)

And TOLL SYSTEM INTEGRATOR

For the BAIFA Express Lane Network Toll Collection System Integration & Maintenance

THIS AGREEMENT is made and entered into as of **DATE TBD** by and between the Bay Area Infrastructure Financing Authority (herein called "BAIFA"), joint powers authority established pursuant to a joint powers agreement between the Metropolitan Transportation Commission and the Bay Area Toll Authority entered into pursuant to Government Code § 6500 *et seq.*, and **NAME TBD**, (herein called "TSI", a _____ corporation organized under the laws of the State of _____).

RECITALS

WHEREAS, BAIFA issued a Request for Proposal for a Toll System Integrator (TSI) to design, develop, furnish, fabricate, install, integrate, test and maintain a fully functioning toll collection system (TCS) for the BAIFA Express Lane Network Toll Collection System Integration & Maintenance project (herein called "the Project"); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of BAIFA; and

WHEREAS, the parties hereto now wish to enter into an agreement (the "Agreement") pursuant to which TSI will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. GENERAL PROVISIONS

1.1. AGREEMENT

1.1.1. Documents Comprising Agreement

The BAIFA Express Lane Network (ELN) Toll Collection System (TCS) Agreement consists of the following signed documents, in order of precedence:

- a. Change Orders;
- b. Agreement terms and conditions, including Approved Project Schedules;
- c. Approved System Design Document;
- d. Attachment A, Scope of Work, including its Attachments;

- e. The Request for Proposal dated xx, 2013, as revised by any Addenda issued;
- f. TSI's Proposal dated xx, 2013, as revised by Best and Final Offer dated xx, 2013.

If the above order of precedence does not resolve a conflict, the BAIFA Project Manager shall make a determination of the appropriate interpretation, which TSI agrees to implement, subject to the claims procedure in Article 13.2. In the event of a conflict between one or more provisions within one of the contract documents listed above, the more stringent provision with respect to TSI's duties and responsibilities shall prevail.

1.1.2. Agreement Interpretation

The documents comprising the Agreement are intended to be complementary, and to fully describe and provide for a complete Project. The parties agree that an interpretation that supports such intent shall be given precedence over one that does not. If the ambiguity allows more than one possible interpretation supporting the intent of a complete product and the references above do not resolve the ambiguity, the BAIFA Project Manager shall make a reasonable determination of the appropriate interpretation.

Where appropriate: references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including" "includes" and "include" shall be deemed to be followed by the words "without limitation," unless otherwise indicated; references to articles or tasks are to this Agreement and include all sub-articles or subtasks under the article or section referenced; words not otherwise defined that have well-known technical or industry meanings are used in accordance with such recognized meanings; references to "persons" include their respective permitted successors and assigns and, in the case of "governmental persons," persons succeeding to their respective functions and capacities; and words of any gender used herein shall include the other gender where appropriate. Unless otherwise specified, lists contained in the Agreement describing or defining the Work shall not be deemed all-inclusive.

1.2. BAIFA'S AUTHORITY

1.2.1. BAIFA's Right to Equipment Location Site Access

BAIFA shall have the right to full access to the Equipment Location Sites ("Sites") at all times during the performance of this Agreement and any extensions thereof. BAIFA agrees that any personnel so granted access shall comply with applicable safety and security procedures for the Sites and shall not unduly interfere with the performance of the Work undertaken at such Site. To the extent possible, reasonable advance notice shall be given of intended entry to a Site by BAIFA during non-business hours.

1.2.2. Authority of Project Manager

The BAIFA Project Manager, identified in Appendix 1, Designated Representatives, has the responsibility, under authority from BAIFA, to administer this Agreement so that its completion is accomplished in accordance with contractual requirements. Should the performance of the TSI or the quality of TSI's work or materials furnished not meet the standards specified in the Agreement, the BAIFA Project Manager has the authority to take any action or require any measures, on behalf of BAIFA, that are available to BAIFA under this Agreement to ensure compliance with contractual requirements, unless the Agreement specifically requires such action or measures to be taken by another individual.

1.2.3. Publicity and Public Presentations

BAIFA must approve all BAIFA or ELN-related copy in writing prior to publication by the TSI or its subcontractors. TSI shall not allow BAIFA or ELN-related copy to be published in TSI's or its subcontractors' advertisements or public relations programs without prior written approval from the BAIFA Project Manager; except that TSI and its subcontractors may include, without BAIFA prior approval, descriptions of the ELN or ELN TCS, their respective roles in the Project, and related contact information in resumes, proposals, qualification packages, project data sheets, and similar items used within the industry to propose and qualify for similar work. TSI agrees that published information on BAIFA or the ELN TCS shall be factual only and in no way imply that BAIFA endorses TSI's firm, service, or product.

In addition, during the term of the Agreement, BAIFA must approve in advance and in writing any public presentations made by TSI or its subcontractors on the ELN or ELN TCS, including in connection with conferences, trade fairs, and studies.

1.2.4. BAIFA's Right of Approval or Consent

Unless otherwise specified, under any provision granting BAIFA a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed.

1.3. TSI'S OBLIGATIONS

1.3.1. General Description

TSI shall perform all services, provide all materials, equipment, and software, and undertake all efforts necessary or appropriate (excluding only those efforts that the Agreement specifies will be provided or undertaken by BAIFA or other persons) to design, implement, and maintain the Project to achieve the full extent of function required by the Agreement, in accordance with the terms and conditions set forth in the Agreement.

Omission from the Agreement of details of the Work that do not substantively alter the functional requirements or the mis-description of details generally acknowledged to be customary and/or necessary to carry out the Work or which TSI knew or reasonably should have known to be included in the Work shall not relieve TSI from performing such omitted or mis-described details, and it shall be performed as if fully and correctly set forth and described in the Agreement, without entitlement to a Change Order hereunder.

1.3.2. TSI's Project Manager

TSI has designated a Project Manager, identified in Attachment D, Key Personnel Assignments, who is authorized to manage the Work and communicate with BAIFA on a day-to-day basis and who will act as the primary point of contact in all matters on behalf of TSI. The Project Manager will assign other individuals as contacts with regard to specific functional areas of the Work, subject to the approval of BAIFA. The TSI's Project Manager is designated in Appendix 1 to this Agreement.

1.3.3. Key Personnel

The key personnel to be assigned to this work by TSI and, if applicable, their hourly rates, are set forth in Attachment D, Key Personnel Assignments, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D requires the prior written approval of the Project Manager or a designee. TSI shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 14.4. TSI agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. BAIFA reserves the right to direct removal of any individual, including key personnel, assigned to this work.

1.3.4. Occupational Safety and Health

TSI and any subcontractor shall not require any laborer or mechanic employed in performance of the Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health as defined by applicable safety and health standards.

1.3.5. Maintenance of Records

TSI shall accurately maintain all contract information in accordance with best industry practices and generally accepted accounting principles.

1.3.6. Permits and Licenses

Except as may be otherwise indicated in any Attachment to the Agreement, TSI shall procure all necessary permits and licenses, pay all charges and fees, comply with all permit

conditions and give all notices necessary and incident to the due and lawful prosecution of the Work.

1.4. TSI'S REPRESENTATIONS

1.4.1. Authority to Contract

TSI represents, warrants and covenants for the benefit of BAIFA that TSI is duly organized with all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted. TSI further represents, warrants and covenants for the benefit of BAIFA that the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of TSI and of TSI's members and will not result in a breach of or a default under TSI's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which TSI or any member of TSI is a party or by which TSI's properties and assets may be bound or affected. This Agreement constitutes the legal, valid and binding obligation of TSI, enforceable in accordance with its terms.

1.4.2. TSI's Review of Agreement

By submitting a Proposal for the Project and by executing this Agreement, the TSI represents that it has carefully reviewed and understands all of the requirements of the Agreement, and has determined that it is fully able to conduct, perform and complete the requirements of the Agreement within the times required and on the terms and conditions stated in the Agreement.

1.4.3. Capabilities and Qualifications of TSI and TSI Personnel

TSI has, and throughout the term of this Agreement shall maintain, all required authority, professional ability, skills, capacity, financial resources, and has available or will obtain the necessary equipment, materials, tools and facilities, to perform its obligations hereunder in accordance with the requirements contained in the Agreement. All personnel performing work under this Agreement will have the necessary credentials and expertise and shall otherwise be fully qualified to perform the Work to which they are assigned.

1.5. GOVERNMENTAL RULES AND APPROVALS

TSI acknowledges and agrees that it is responsible for familiarizing itself with the requirements of any and all applicable governmental rules and regulations pertaining to its performance of Work under this Agreement and for complying with the foregoing at its sole cost and expense and without any increases in the lump sum or unit prices in Attachment C, Price Forms, or any extensions of the Guaranteed Completion Dates in Attachment B, Project Schedule and Milestones of the Agreement on account of such compliance (other than those implemented through the Change Order procedure described in Article 12), regardless of whether such

compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Agreement.

1.6. NOTICES

Except for invoices submitted by TSI pursuant to Article 3, Payment, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to the individuals listed in Appendix 1. Address, fax, or email changes to Appendix 1 may be made by either party by written notice, without the need for a Change Order.

2. TIME PROVISIONS

2.1. AGREEMENT TERM

TSI's services hereunder shall commence on or after XX, 2014, and shall be completed no later than June 30, 2019, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. The Agreement may be extended, in BAIFA's sole discretion, in annual increments of up to five (5) additional consecutive years, subject to the annual budgetary approval processes of BAIFA.

2.2. GUARANTEED COMPLETION DATES AND LIQUIDATED DAMAGES

TSI shall commence ELN TCS operations (Tolling Commencement) according to the Guaranteed Completion Dates in Attachment B, Schedule and Project Milestones, which are March 17, 2016 for Interstate 680; March 16, 2017 for Interstate 880; and September 21, 2017 for Interstate 80.

Time is of the essence with respect to such dates. Failure to meet any Tolling Commencement Guaranteed Completion Date shall result in liquidated damages of \$5,000 per day or any portion thereof, with no limitation of liability.

2.3. COMPUTATION OF PERIODS

References to "days" contained in the Agreement shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Agreement (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day, which means a weekend day, or one of the holidays listed in Appendix 2, BAIFA Holidays, such act or notice may be timely performed on the next succeeding day that is a business day. Notwithstanding the foregoing, requirements contained in the Agreement for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a weekend or BAIFA Holiday. The term "business day" shall mean days on which BAIFA is officially open for business.

2.4. PROJECT SCHEDULE

The Project Schedule shall be governed by Attachment B, Project Schedule and Milestones. With respect to changes to Attachment B, TSI shall submit project schedules for BAIFA approval according to Attachment A-2, Implementation Requirements, with the exception of changes to the Guaranteed Completion Dates for Tolling Commencement in Article 2.2. Any changes to the dates in Article 2.2 are subject to the Change Order procedures in Article 12.

TSI shall furnish sufficient resources to ensure the performance of the Work in accordance with Attachment B, Project Schedule and Milestones and the most recent Approved Project Schedule. If TSI falls behind in the performance of the Work as indicated in Attachment B or the Approved Project Schedule, TSI shall take such steps as may be necessary to improve its progress.

Submission of the monthly revision to the Project Schedule shall not release or relieve TSI from full responsibility for completing the Work within the time set forth in the previous Approved Project Schedule.

2.4.1. Notice to Proceed and Progression of Work

When indicated in Attachment B, Project Schedule and Milestones, TSI shall begin work only upon BAIFA's issuance of a Notice to Proceed. TSI shall at all times schedule and direct the Work to provide an orderly progression thereof, to achieve completion within the specified time for completion and in accordance with the Approved Project Schedule.

2.5. DELAYS

2.5.1. Mitigation of Damages and Delays

TSI agrees to take all reasonable and appropriate actions to mitigate damages in all circumstances, including, with respect to TSI, re-sequencing, reallocating or redeploying its resources, as appropriate.

In the event of potential delay, TSI shall comply with Attachment A-2, Implementation Requirements, subsection 1.8.1, which requires that TSI shall give written notice to BAIFA within fourteen (14) days after TSI knows or should have known of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which TSI may claim an extension of time. Failure to give such written notice shall result in a waiver of the right to a time extension related to the cause or condition

2.5.2. Schedule Slippage

If at any time TSI fails to complete any activity by the completion date in the established Work schedule, unless previously excused by the BAIFA Project Manager in writing, or as

elsewhere provided for in the Agreement, TSI shall comply with Attachment A-2, Implementation Requirements, subsection 1.8.1, which requires that TSI provide a Recovery Schedule. Notwithstanding TSI compliance with 1.8.1, Recovery Schedules do not release the TSI from liability for delayed Milestone delivery.

If TSI fails or refuses to implement measures sufficient to bring its Work back into conformity with the current Approved Project Schedule, its right to proceed with any or all portions of the Work may be terminated under the provisions of the Agreement. However, in the event BAIFA, in its sole determination, should permit TSI to proceed, BAIFA's permission shall in no way operate as a waiver of its rights nor shall it deprive BAIFA of its rights under any other provisions of the Agreement.

Under no circumstances is BAIFA responsible for any delay (or resulting damages) caused by or arising from the actions of TSI, its employees, agents, officers or subcontractors; nor is TSI responsible for any delay (or resulting damages) caused by or arising from the actions of, BAIFA, its commissioners, officers, employees, and agents.

3. PAYMENT

3.1. GENERAL

Payments to the TSI will be as indicated in Attachment C, Price Forms, subject to any adjustments described below in Article, 3.4.3, TSI Performance and Penalties. All work performed by the TSI in meeting the requirements of the Agreement shall be paid under one of the payment methods below, in this Article 3, and such payment shall constitute full compensation for the Work, including, without limitation, all applicable surcharges such as taxes, insurance, bond premiums, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractor costs, travel, materials, supplies, the cost of obtaining all government approvals and compliance with and maintenance of such governmental approvals, and all risk of inflation, currency risk, interest and other costs of funds associated with the payment schedule for the Work.

All invoices shall be made in writing and delivered or mailed to BAIFA as follows:

Attention: Accounting Section
Bay Area Infrastructure Financing Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Payment will be made by BAIFA within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

Prior to the first payment by BAIFA pursuant to this Agreement, TSI shall provide to BAIFA a properly completed U.S. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. TSI's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Article 4.3.2.

3.2. MAXIMUM PAYMENT

Subject to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid TSI under this Agreement exceed the sum of [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"), subject to the availability of funds and annual budget authorization by BAIFA. Should BAIFA terminate this Agreement before the expiration of the initial contract term due to the unavailability of funds or lack of annual budget authorization, the conditions of Article 15.2, Termination for the Convenience of BAIFA, would apply.

3.3. PAYMENT FOR IMPLEMENTATION

3.3.1. General

For the lump sum items in Attachment B, Schedule and Project Milestones, Milestone Series 1 through Milestone Series 5, payment will be made as indicated in Attachment C, Price Forms, C-1, Implementation, based on satisfactory completion of the Milestones and related deliverables by the Guaranteed Completion Dates in Attachment B, Schedule and Project Milestones. "Completion" as used herein includes achievement of applicable approvals by BAIFA, in compliance with the submission and review process outlined in section 1.3.6 of Attachment A-2, Implementation Requirements.

3.3.2. Invoices for Lump Sum Items

Invoices for lump sum payments shall be supported by BAIFA's written approval for all Qualifying Events and related deliverables described in Attachment B, Schedule and Project Milestones, including any additional documentation requested by BAIFA to support TSI's invoice. TSI shall provide any such additional documentation within fourteen (14) days of receipt of BAIFA's request. BAIFA may delay payment, with no interest accruing during the delay, for any invoiced item if, in BAIFA's sole opinion, sufficient supporting documentation has not been provided. If BAIFA and the TSI disagree about the Work completed as reflected in an invoice, BAIFA shall make payment based on the Work it believes is completed, and specify in writing the

reason for the withheld amounts. The TSI may initiate the dispute resolution procedures set forth in Article 13 following BAIFA's written disapproval of any invoiced amount.

3.3.3. Withheld Amounts and Final Payment

BAIFA will withhold as a retainage 5% of the value of each payment due Attachment C-5, Implementation Milestone Payments, until all services required through System Acceptance as defined in Article 5.7, have been completed and accepted by BAIFA. Final payment of any balance due to TSI, including any amounts withheld, will be made promptly upon written notification by BAIFA of System Acceptance and after receipt and written acceptance by BAIFA of the System Acceptance-related reports and working papers which are required to be furnished under this Agreement. Retainage will not be withheld on Maintenance payments.

3.4. PAYMENT FOR MAINTENANCE

3.4.1. General

TSI shall be paid on a monthly basis, based on the price schedule set out in the Attachment C-2, Maintenance.

3.4.2. Invoices for Maintenance

Invoices for maintenance shall be submitted by TSI and received by BAIFA before or on the 15th of each month, and shall be supported by standard monthly reports that reflect the measures of each performance requirement for the billing month in each invoice. TSI shall also provide any additional documentation BAIFA may request within fourteen (14) days of receipt of the request. BAIFA may delay payment, with no interest accruing during the delay, for any invoiced item if, in BAIFA's sole opinion, sufficient supporting documentation has not been provided. If BAIFA and the TSI disagree about the Work completed as reflected in an invoice, BAIFA shall make payment based on the Work it believes is completed, and specify in writing the reason for the withheld amounts. The TSI may initiate the dispute resolution procedures set forth in Article 13 following BAIFA's written disapproval of any invoiced amount.

3.4.3. TSI Performance and Penalties

Failure to meet the performance requirements for Maintenance provided in Attachment F, Performance Requirements & Penalties shall result in penalties as described therein. Standard reports shall be used to measure whether the performance standards in Attachment F, Performance Requirements & Penalties, have been met. Standard reports shall be generated by TSI and provided

to BAIFA on a monthly basis. The reports shall be in a format approved by BAIFA. Where performance measures are not met, accompanying supporting raw data and a correction plan shall be attached. Attachment F's Performance Requirements may be waived due to extraordinary or unforeseen events or due to circumstances beyond the control of the TSI as determined by the BAIFA Project Manager.

The total amount of assessed penalties shall be paid by the TSI to (BAIFA) within fifteen (15) days of notification of assessment. If payment is not received by BAIFA at that time, the total amount may be deducted by BAIFA from any money payable to the TSI pursuant to the Agreement. No delay by BAIFA in assessing or collecting penalties shall be construed a waiver of such rights. The penalties shall be limited per day. Issues that prevent the restoration of any area to the Performance Requirement shown in Attachment F, Performance Requirements and Penalties, shall be brought to BAIFA's attention immediately and shall not relieve the TSI of penalties. BAIFA will assess mitigating circumstances that may be considered for assessment of penalties for each instance. Penalties shall not be more than 50% of the maintenance payment due to the TSI during the month of the penalties. Penalties may be assessed in consecutive months if issues are not resolved.

The TSI shall not be liable for penalties when the failure to meet performance measures is the result of a Force Majeure event as defined in the Agreement.

If BAIFA elects not to impose penalties in a particular instance, said decision shall not be construed as a waiver of the right to pursue future assessments for penalties for failure to meet Performance Requirements; nor construed to limit any additional remedies available to BAIFA as provided in the Agreement.

3.5. PAYMENT FOR TASK ORDERS

3.5.1. General

TSI shall be compensated for System Improvements described in Article 12.3 as specified in signed Task Orders. All Task Orders shall be developed according to the process established in Attachment A-5, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-6, Task Order Form. All payments under Task Orders shall be consistent with Attachments C, Price Forms.

Payment terms may be based on acceptance of agreed-upon deliverables or upon time and materials reimbursement, depending on the requirements of each Task Order. For time and materials-based payment of Task Orders at the rates in Attachments C-4, Hourly Labor Rates, shall apply. The hourly rates in Attachment C-4 include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless

BAIFA prior written authorization is obtained for any changes. In no event shall the total compensation to be paid TSI under the Agreement exceed the Maximum Payment specified in Article 3.2 of the Agreement.

3.5.2. Expenses General

For time and materials Task Orders, BAIFA will reimburse TSI for all expenses deemed reasonable and necessary by BAIFA incurred by TSI in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of TSI or any subcontractors in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

3.5.3. Task Order Invoices

TSI shall submit invoices for services rendered under Task Orders no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by TSI. If applicable, TSI's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Article 4.3.2.

For Task Orders authorizing payment on the basis of satisfactory deliverables, TSI shall specify each deliverable for which payment is requested, the amount requested, and the total amount paid to date under the Task Order.

For Task Orders authorizing time and materials payment, TSI shall specifying the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order, which shall be supported by monthly progress reports.

4. RIGHTS IN DATA

4.1. DEFINITIONS

As used in this Article, the following capitalized terms have the following meanings.

4.1.1. Commercial Software

The term "Commercial Software" means any software programs, code, materials or data used in the performance of this project for which the Intellectual Property Rights are owned by a third party, that is commercial and offered and sold in substantial quantities in the commercial marketplace, and that can be procured or utilized by BAIFA and other public entities in the same precise form as available to the general public, all of which software must be identified in Appendix 3, Software List.

4.1.2. TSI Software

The term “TSI Software” means any software programs, code, materials or data used in the performance of this project that pre-exist this Agreement; are developed outside its scope of services; or are a new translation, version or derivative of an existing program, code, material or method that is the intellectual property of TSI, its subcontractors, or a third party licensor of software.

4.1.3. Development Documents

The term “Development Documents” means those documents that are delivered to BAIFA by TSI during the system design, development and implementation processes.

4.1.4. Express Lane Network Host (“Host”)

The terms “Express Lane Network Host” and “Host” mean the portion of Toll Collections System (TCS) that receives and processes Lane System data to form transactions, assign toll rates, determine pricing, build Trip Transactions, and report on System Data. The Host includes the system and user interfaces with BAIFA systems and system and user interfaces with third-party systems.

4.1.5. Express Lane Network Lane System (“Lane System”)

The terms “Express Lane Network Lane System” and “Lane System” mean the portion of the TCS collects System Data from in-lane equipment, systems and sub-systems and processing the System Data for transmission to the Host. The Lane System includes the lane controller and in-lane equipment, and the operating systems, drivers, peripherals and interfaces. The Lane System includes the Software for maintenance and monitoring the lane level systems and subsystems. The Lane System does not include system or user interfaces with the Host.

4.1.6. Host Software

The term “Host Software” means all Software constituting, comprising, or otherwise included or used in any way in, as part of, or for the Host, excluding Host Developments and pre-approved Commercial Software.

4.1.7. Host Developments

The term “Host Developments” means: (i) those portions of the Software, Special Hardware, and Work Product that were developed under the Agreement to satisfy the specifications or requirements of the Host; (ii) those modifications of pre-existing software and hardware that were made to satisfy the specifications or requirements of the Host; and (iii) any changes to the foregoing

that are made in response to requests by BAIFA or address the changing needs of BAIFA's project or programs.

4.1.8. Intellectual Property Rights

The term "Intellectual Property Rights" means any and all copyrights, inventions, patents, trademark and service-mark rights, design rights, moral rights, trade secrets, know-how, and/or other intellectual-property or proprietary rights, whether or not registered or issued and whether arising under domestic or international law, common law, or any other legal principles.

4.1.9. Lane System Developments

The term "Lane System Developments" means: (i) those portions of the Software and Special Hardware that were developed under the Agreement to satisfy BAIFA specifications or requirements; (ii) those modifications of pre-existing software and hardware that were made to satisfy BAIFA specifications; and (iii) any changes to the foregoing that are made in response to requests by BAIFA or address the changing needs of BAIFA's project or programs.

4.1.10. Object Code

The term "Object Code" means: (i) the machine readable code version of the Software, which is substantially or entirely in binary form and is intended to be executable by a computer after suitable processing or linking but without intervening steps of compilation or assembly; and (ii) the written instructions necessary or appropriate for BAIFA to install and use the Object Code form of the Software for the TCS.

4.1.11. Software

The term "Software" means any Source Code, Object Code, computer databases and any associated html and graphics files (other than Third Party Software that is separately licensed by BAIFA) that are supplied to BAIFA by TSI under the Agreement, together with all enhancements, improvements and modification to the foregoing, to satisfy BAIFA's specifications or requirements for the Lane System and Host.

4.1.12. Software Documentation

The term "Software Documentation" means the Source Code on industry standard media and Source Code listing in human readable form of all Software including logic equations for programmable array logic integrated circuits (as well as the compiler or assembler and associated software tools for the Source Code); all design documents, specifications, flow charts, data flow diagrams and other materials or documents which explain the performance, function or operation of individual software programs and the interaction of programs within the TCS; license(s) to all applicable Intellectual Property, if any; all control files and scripts used to compile, link, load,

and/or make the applications and systems, test scripts, test plans and test data; all password security codes and any other information and documents reasonably necessary or desirable to operate and maintain the Software.

4.1.13. Source Code

The term “Source Code” means the computer programming code (other than binary code) and any procedural code such as job control language, which may be printed out or displayed in human readable form.

4.1.14. Source Code Documentation

The term “Source Code Documentation” means all documentation reasonably necessary or desirable to allow for compiling and testing of the Source Code, including without limitation a list of applicable proprietary software development tools, license(s) to all applicable Intellectual Property, detail on any permitted third party commercially available software used in conjunction with the system (including name, version, sub-version number and release date), documentation on how any permitted third party commercially available software is linked to the system software, and documentation showing the identities of and most current available contact information for one or more qualified programmers who had or have responsibility for the creation of the Source Code at issue and the methodology such that they can explain the Source Code and the methodology and otherwise be used as system references.

4.1.15. Special Hardware

The term “Special Hardware” means any mechanical part and any piece of electrical or digital equipment that TSI designs, develops or modifies for the Host and Lane System, including, without limitation, lane controllers, hand-held reader devices, VTMS, together with the written instructions necessary or appropriate to install and operate the Special Hardware.

4.1.16. Special Hardware Documentation

The term “Special Hardware Documentation” means the documents that contain the necessary information to have the Special Hardware (and any modifications, improvements, or enhancements to the Special Hardware) manufactured and supplied to BAIFA, including, without limitation, the manufacturing drawings, data and specifications of the equipment and spare parts and of their tools, dies, and fixtures, including art work necessary to fabricate circuit boards; license(s) to all applicable Intellectual Property, if any; all drawings from top level equipment outline, interface and mounting, through assembly, sub-assembly, and fabricated piece parts drawings necessary to manufacture the equipment; all schematics and wiring diagrams and cable harness drawings; all installation, configuration, and layout drawings; all block diagrams and family trees; all assembly

instructions and drawings; all test specifications for top-level equipment and for all assemblies to the lowest testable level of assembly; all test procedures for all tests; all maintenance manuals and procedures; all operator manuals; all flow charts relevant to the manufacture, assembly, programming and operation of the equipment; part lists containing sufficient information to procure all parts and material required to manufacture the equipment from its primary source, except software products available commercially; documentation for the Source Code if not provided otherwise; all password security codes and any other information and documents necessary to manufacture and maintain the Special Hardware. Notwithstanding the foregoing, the Special Hardware Documentation does not have to include the information necessary to manufacture any Special Hardware part that is generally commercially available from at least two suppliers.

4.1.17. System Data

The term “System Data” means all information collected by and reported on through the TCS.

4.1.18. Toll Collection System (“TCS”)

The terms “Toll Collection System” and “TCS” mean the complete, functioning, electronic toll system that includes all hardware, software, interface, electrical, and communications equipment; works in conjunction with the FasTrak RCSC; and uses various technologies to facilitate toll collection. TCS may also refer to an unspecified component or subsystem of TSI’s technical solution that performs a function being identified in the requirements.

4.1.19. Third Party Software

The term “Third Party Software” means Software not owned by TSI and are necessary for the proper functioning of the TCS.

4.1.20. Work Product

The term “Work Product” means any and all works of authorship or other deliverables prepared, developed, or assembled by TSI under this Agreement or otherwise resulting from work performed by TSI under this Agreement, including without limitation any plans, specifications, drawings, quantities, proposals, sketches, diagrams, calculations, charts, tables, business rules, system requirements, concepts, processes, algorithms, configuration parameters, transaction processing rules, operational procedures, logic, software, code, pseudo-code, and other computing code and configuration. Work Product includes, without limitation, Development Documents, Host Developments, Lane System Developments, Software, Software Documentation, and Special Hardware Documentation.

4.2. INTELLECTUAL PROPERTY AND WORK PRODUCT OWNERSHIP RIGHTS

4.2.1. Data to Be Furnished by BAIFA

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BAIFA Data”) made available to TSI by BAIFA for use by TSI in the performance of its services under this Agreement shall remain the property of BAIFA and shall be returned to BAIFA at the completion or termination of this Agreement. No license to such BAIFA Data, outside of the Scope of Work is conferred or implied by TSI’s use or possession of such BAIFA Data. Any updates, revisions, additions or enhancements to such BAIFA Data made by TSI shall be the property of BAIFA and subject to the provisions of Article 4.2.3.

4.2.2. Restrictions on Use of BAIFA Data

The current electronic toll system including, processing techniques, and procedures that support the toll solution contain proprietary and/or confidential BAIFA information. The TSI and any permitted subcontractors will be required to sign a non-disclosure agreement agreeing to maintain the confidentiality of the current and future electronic toll system processes, and procedures prior to receiving any BAIFA Data deemed confidential by BAIFA.

Neither TSI nor its subcontractors will be permitted to use or disseminate any BAIFA Data outside of the context of the Project, without the prior written approval of BAIFA. All authorized uses of BAIFA Data by the TSI outside of the context of the Project shall include a copyright notice on behalf of BAIFA.

4.2.3. Ownership of Work Products

4.2.3.1. BAIFA-owned Work Products

Except for Lane System Developments as provided in Section 4.2.3.2, all Work Products shall be and are the property of BAIFA; and TSI hereby assigns to BAIFA ownership of any and all rights, title and interest in and to such Work Products, including ownership of any Intellectual Property Rights in the Work Product. BAIFA shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the TSI or in the hands of any subcontractor upon completion or termination of the Agreement shall be immediately delivered to BAIFA. TSI also agrees to execute all papers reasonably necessary and necessary for BAIFA to record or perfect its ownership of any such rights in the Work Product.

TSI shall be responsible for the preservation of any and all such Work Products prior to transmittal to BAIFA, and TSI shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to BAIFA.

TSI represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

For any Software constituting such Work Products, TSI will deliver to BAIFA all Source Code, including Source Code to modifications, object code, updates, fixes, utilities and libraries, along with any materials reasonably necessary to assemble or compile the Source Code and with Source Code Documentation—at a minimum at the time of the Operational Testing Milestone in Attachment A-2, Implementation Requirements, and in any event prior to System Acceptance.

Furthermore, with respect to any such Software constituting Work Products, in addition to the Source Code and Source Code Documentation and object code, the TSI shall make available to BAIFA, upon request, a list of all applicable software development tools, i.e., all software required to edit/alter the Source Code and successfully recompile and operate the software, including operating systems, libraries, tools and utilities, data base structures, code and compilers, as well as any other items not readily available to BAIFA in the commercial marketplace. In addition, throughout the maintenance period of this Agreement, TSI shall provide BAIFA, as Work Products, Source Code and Source Code Documentation and object code for any and all modifications, updates, fixes, utilities and libraries relating to any such Software.

4.2.3.2. TSI-owned Work Products

TSI or its subcontractors and/or third party licensors of Software shall retain ownership of the copyright to Lane System Developments. TSI hereby grants, and shall require any applicable subcontractor also to grant, to BAIFA a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, modify, create derivative works based on, publish, or disclose Lane System Developments for the benefit and operation of the Project. BAIFA may exercise its license through a sublicense to a third party, without the approval of TSI or its subcontractors, if applicable.

Through the term of this Agreement and throughout the maintenance period of this Agreement, TSI shall provide to BAIFA all bug fixes, patches, updates, upgrades, or the like relating to Lane System Developments.

4.2.4. TSI Software

4.2.4.1. BAIFA-owned Software

TSI hereby assigns to BAIFA ownership of any and all rights, title and interest in and to all Host Software, including ownership of any Intellectual Property Rights in the Host Software. TSI

also agrees to execute all papers reasonably necessary and necessary for BAIFA to record or perfect its ownership of any such rights in the Host Software.

TSI represents and warrants that all Host Software is original or developed from materials in the public domain (or both) and that all Host Software provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

For all Host Software, TSI will deliver to BAIFA all Source Code, including Source Code to modifications, updates, fixes, utilities and libraries, along with any materials reasonably necessary to assemble or compile the Source Code and with Source Code Documentation—at a minimum at the time of the Operational Testing in Milestone Attachment A-2, Implementation Requirements, and in any event prior to System Acceptance.

Furthermore, with respect to Host Software, in addition to the Source Code and Source Code Documentation, the TSI shall make available to BAIFA, upon request, a list of all applicable software development tools, i.e., all software required to edit/alter the Source Code and successfully recompile and operate the software, including operating systems, libraries, tools and utilities, data base structures, code and compilers, as well as any other items not readily available to BAIFA in the commercial marketplace. In addition, throughout the maintenance period of this Agreement, TSI shall provide BAIFA with Source Code and Source Code Documentation for any and all modifications, updates, fixes, utilities and libraries relating to Host Software. TSI or its subcontractors and/or third party licensors of software shall retain ownership of the copyright to TSI Data. TSI hereby grants, and shall require any applicable subcontractor also to grant, to BAIFA a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, modify, create derivative works based on, publish, or disclose TSI Data for the benefit and operation of the Project, effective upon payment under this Agreement to TSI for such materials, provided that BAIFA agrees that it will not publish or disclose TSI Data to which the “trade secret” privilege, as defined in California Evidence Code Section 1061 would apply. BAIFA may exercise its license through a sublicense to a third party, without the approval of TSI or its subcontractors, if applicable.

Through the term of this Agreement and throughout the maintenance period of this Agreement, TSI shall provide to BAIFA all bug fixes, patches, updates, upgrades, or the like relating to TSI Data.

With the exception of standardized commercially available third-party software, as defined in Article 4.2.6, Commercial Software, below, all Source Code, including Source Code to modifications, updates, fixes, utilities and libraries, shall be deposited in escrow, along with any materials reasonably necessary to assemble or compile the Source Code and with Source Code

Documentation, prior to System Acceptance. Every twelve (12) months for the duration of the maintenance period and within 30 days following a major software change, the latest version of the Source Code and Source Code Documentation shall be placed in escrow. Additionally, BAIFA may request additional escrow deposits at BAIFA's cost. If BAIFA requests such a deposit, it shall be complete within 30 days of request by BAIFA. BAIFA shall have the right to retain the services of a reputable expert to compile and test the Source Code and review the Source Code Documentation deposited in the escrow account to determine that they are sufficient to permit BAIFA to exercise its rights to access such Source Code and documentation, at BAIFA's cost, subject to such expert's signing a nondisclosure agreement with the TSI or subcontractor owning the software. Should assistance be required of TSI during this process, TSI will be given a Change Order in accordance with the terms of the Agreement to provide such services on a time and materials basis.

Other than those costs associated with additional escrow deposits made at BAIFA's request, TSI is responsible for all costs associated with maintaining the escrow account. The escrow costs are separated and included for the entire Agreement term in the Total TCS Implementation Cost (Form C-1 of Attachment C, Price Forms, so that the Proposer's Unit prices and Lump Sum prices are indicative of the actual costs of the component pricing.

4.2.4.2. TSI-owned Software

Except as provided in Section 4.2.4.1, TSI or its subcontractors and/or third party licensors of software shall retain ownership of the copyright to TSI Software, which must be identified in Appendix 3, Software List. TSI hereby grants, and shall require any applicable subcontractor also to grant, to BAIFA a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, modify, create derivative works based on, publish, or disclose TSI Software for the benefit and operation of the Project, effective upon payment under this Agreement to TSI for such materials, provided that BAIFA agrees that it will not publish or disclose TSI data to which the "trade secret" privilege, as defined in California Evidence Code Section 1061 would apply. BAIFA may exercise its license through a sublicense to a third party, without the approval of TSI or its subcontractors, if applicable.

Through the term of this Agreement and throughout the maintenance period of this Agreement, TSI shall provide to BAIFA all bug fixes, patches, updates, upgrades, or the like relating to TSI Software.

4.2.5. License Back

For all Software for which BAIFA owns the Intellectual Property Rights under Articles 4.2.3.1, BAIFA-owned Work Product and 4.2.4.1, BAIFA-owned Software, BAIFA hereby grants

to TSI a nonexclusive, royalty-free, irrevocable, perpetual, assignable license to use, copy, distribute, perform, modify, and create derivative works based on such Software, Software Documentation, and Special Hardware Documentation.

4.2.6. Commercial Software

TSI shall not use any Commercial Software on Project without the prior written approval of BAIFA. TSI shall secure and administer all licenses or sublicenses for Commercial Software used for the Project and shall provide to BAIFA copies of such licenses, along with any documentation provided by the third party suppliers. TSI shall not be required to furnish to BAIFA the Source Code to such Commercial Software, the right to make copies (other than back-up, archival, or other disaster-recovery copies), or the right to modify the software. However, TSI shall secure licenses to Commercial Software that authorize BAIFA to allow third parties to use such software in connection with the Project.

Licenses or sublicenses shall name BAIFA as licensee, where possible and consistent with TSI's obligations under this Agreement. Otherwise, TSI shall be named as licensee. In that case, at least six months prior to the end of the Agreement term, TSI shall begin efforts either to assign such licenses or sublicenses to BAIFA or BAIFA's designee or, if such assignments are not practicable, to provide BAIFA with sufficient information to enable it to secure the licenses or sublicenses necessary for the continued operation of the Project.

4.2.7. Open Source/Freeware

Open Source/Freeware is defined as software for which the source code is made freely available for use, modification, and redistribution. Open Source/Freeware also includes software that is neither a Work Product owned by BAIFA, as described in Article 4.2.3.1, BAIFA-owned Work Products, nor TSI Software or Commercial Software, as described in Article 4.2.4, TSI Software and Article 4.2.6, Commercial Software, respectively.

Open Source/Freeware that is approved for use under this Agreement is listed in Appendix 3, Software List. TSI shall not use any other Open Source/Freeware on Project without the prior written approval of BAIFA. Requests for approval shall be in writing and include the name, version, functionality, origin of software source, availability of source, author, technical documentation, integration and security issues, justification for use, and copies of applicable licenses. TSI agrees to service and maintain all Open Source/Freeware approved for use in Appendix 3, Software List.

TSI represents and warrants the following: (a) that the licenses for any Open Source/Freeware used in the Project allow the use of Open Source/Freeware in Project by, for, and

on behalf of BAIFA; (b) there are no charges connected to any licenses for any Open Source/Freeware used in the Project or that it has fully covered any such charges; and (c) the use of Open Source/Freeware will not conflict with or otherwise impair BAIFA's Intellectual Property and Work Product ownership rights set forth under Article 4.2.

4.2.8. Escrow Agreement and Release

With the exception of Commercial Software, all Source Code to TSI Software under Section 4.2.4.2 and Open Source/Freeware used under Section 4.2.7, including Source Code to modifications, updates, fixes, utilities and libraries, shall be deposited in escrow, along with any materials reasonably necessary to assemble or compile the Source Code and with Source Code Documentation, prior to System Acceptance. Every twelve (12) months for the duration of the maintenance period and within 30 days following a major software change, the latest version of the Source Code and Source Code Documentation shall be placed in escrow. Additionally, BAIFA may request additional escrow deposits at BAIFA's cost. If BAIFA requests such a deposit, it shall be complete within 30 days of request by BAIFA. BAIFA shall have the right to retain the services of a reputable expert to compile and test the Source Code and review the Source Code Documentation deposited in the escrow account to determine that they are sufficient to permit BAIFA to exercise its rights to access such Source Code and documentation, at BAIFA's cost, subject to such expert's signing a nondisclosure agreement with the TSI or subcontractor owning the software. Should assistance be required of TSI during this process, TSI will be given a Change Order in accordance with the terms of the Agreement to provide such services on a time and materials basis. Other than those costs associated with additional escrow deposits made at BAIFA's request, TSI is responsible for all costs associated with maintaining the escrow account. Such amounts are included in Attachment C, Price Forms, C-2, Maintenance.

Within 30 days of the execution of this Agreement, TSI will further enter into a separate written escrow agreement with BAIFA. The escrow agreement will include at a minimum the following as release events, the occurrence of any of which require the escrowed software and Source Code to be released to BAIFA:

1. in the event that TSI ceases to function as a going concern; makes an assignment for the benefit of creditors; becomes the subject of a proceeding in bankruptcy, receivership, insolvency or similar laws, which proceeding is not dismissed within thirty (30) days after it is instituted; or liquidates, dissolves or sells substantially all of its assets or is purchased by another company;
2. in the event that TSI is unable or fails to adequately and at reasonable cost to BAIFA support and maintain the licensed software, even after receiving reasonable notice as determined by BAIFA from BAIFA of such failure; or

3. in the event that TSI materially breaches its agreement with BAIFA in a manner that directly interferes with BAIFA's ability to use the licensed software as agreed.

4.3. CONFIDENTIAL INFORMATION

4.3.1. Nondisclosure of Confidential Information

During the performance of the Work under the Agreement, it may be necessary for one party to this Agreement to disclose or make certain confidential, non-public or proprietary information ("Confidential Information") available to the other party for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice. As between BAIFA and TSI, Confidential Information shall remain the sole and exclusive property of the disclosing party, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of the receiving party; b) the receiving party can demonstrate to have had rightfully in its possession prior to disclosure by the disclosing party or its contractors, vendors or licensors; c) the receiving party rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

The receiving party agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by the disclosing party. The receiving party further agrees to disclose Confidential Information only to its Commissioners, directors, officers, employees and contractors, who need to know such information, and who have agreed to be bound by the terms and conditions of this Article 4.3.1. Promptly upon the request of the disclosing party, at any time and for any reason, the receiving party shall destroy or return to the disclosing party, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing.

The parties agree to require any agents or third parties to whom Confidential Information must be disclosed to execute a nondisclosure agreement that incorporates the substantive requirements of this Article 4.3.1, the terms of which will be provided in advance to the other party for review and comment.

The current and future electronic toll system including processing techniques and procedures that support the toll solution are Confidential Information. If requested by BAIFA, TSI shall be required to sign a separate non-disclosure agreement prior to receiving Confidential Information. Otherwise, the requirements contained in this Article 4.3.1 protecting Confidential Information apply.

4.3.2. TSI Designation of Confidential Information

BAIFA's rights and responsibilities with respect to disclosure of any printed or electronic document or writing are subject to the California Public Records Act ("the Act" in this Article) (California Government Code § 6250 *et seq.*). To the extent that TSI considers any writing, as defined in Government Code § 6252 (e), to be a trade secret or otherwise confidential or proprietary, TSI shall mark such document or record "Confidential". BAIFA's agreement with TSI's designation of the document or record shall be presumed 15 days after its receipt, and BAIFA will treat such document or record as Confidential Information, pursuant to Article 4.2.1. However, should Confidential data be requested pursuant to the Act, TSI as a condition of non-disclosure shall indemnify, defend and hold BAIFA harmless against any claims, suits or other proceedings instituted against BAIFA under the Act for access to such writing, paying all costs associated with such claims, suits or actions, including legal fees, with sole control of their defense, including all negotiations, and any settlement or compromise.

If BAIFA disagrees with TSI's designation of the document or record as Confidential Information, BAIFA shall notify the TSI of BAIFA's decision in writing and may: (a) return the document to the TSI, requesting that it be re-designated as non-confidential or re-submitted, excluding any Confidential Information; or (b) agree to accept such document or record as Confidential Information, provided that TSI agrees in writing to indemnify, defend and hold BAIFA harmless against any claims, suits or other proceedings instituted against BAIFA under the Act for access to such writing, paying all costs associated with such claims, suits or actions, including legal fees, with sole control of their defense, including all negotiations, and any settlement or compromise.

4.4. PERSONALLY IDENTIFIABLE INFORMATION

TSI will have access to personally identifiable information ("PII") in connection with the performance of the Agreement. PII is any information that is collected or maintained by BAIFA or TSI that identifies or describes a person or can be directly linked to a specific individual, including that individual's account. Examples of PII include, but are not limited to, vehicle license plate number, toll tag identification number, and travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Agreement:

4.4.1. Right to Audit

TSI shall permit BAIFA and its authorized representatives to audit and inspect: (i) TSI's facilities where PII is stored or maintained; (ii) any computerized systems or electronic media used to share, disseminate or otherwise exchange PII; and (iii) TSI's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying TSI's compliance with this Agreement, and all applicable laws.

4.4.2. General Confidentiality of Data

All PII made available to or independently obtained by TSI in connection with this Agreement shall be protected by TSI from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to BAIFA. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement.

TSI agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

TSI agrees to retain only the PII of a FasTrak® customer that is necessary to perform toll collection functions. All other information that may be collected and maintained shall be discarded no more than four years and six months after collection. TSI shall purge all information, including PII, no later than four years and six months after the date of collection. At the conclusion of this retention period, TSI agrees to discard data, including PII, using industry standard Department of Defense ("DOD") compliant methods. Discarded data will be unavailable and unrecoverable following the respective purge exercise on any electronic media including, but not limited to, magnetic disk, optical disk, magnetic tape, and memory. No backup will be available following the purge. TSI agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. TSI agrees to use DoD approved methods to sanitize any electronic media containing PII, including but not limited to magnetic disks, optical disks, magnetic tape, and memory prior to discarding (a) after useful life has ended or (b) at the conclusion of the Project, whichever comes first. Hard drives and computers shall be reformatted and reimaged in an equivalently secure fashion. TSI is prohibited from storing PII on portable hardware including, but not limited to laptops, thumbdrives and so forth. At the conclusion of the performance period of this Agreement, TSI shall submit a certification to the BAIFA Project Manager as follows: "All PII

whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in this Article 4.4, Personally Identifiable Information.

4.4.3. Compliance with Statutes and Regulations

TSI agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 *et seq.*) and in the California Streets and Highways Code Section 31490. In addition, TSI warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and BAIFA relating to the handling and confidentiality of PII and agrees to indemnify BAIFA against any loss, cost, damage or liability by reason of TSI's violation of this provision.

4.4.4. Subcontractors

BAIFA approval in writing is required prior to any disclosure by TSI of PII to a subcontractor or prior to any work being done by a subcontractor that entails receipt of PII. Once approved, TSI agrees to require such subcontractor to sign an agreement in substantially identical terms as this Article 4.4, Personally Identifiable Information, binding the subcontractor to comply with its provisions.

4.4.5. TSI Guarantees

TSI shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Agreement.

TSI shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to BAIFA.

TSI shall comply, and shall cause its employees, representatives, agents and subcontractors to comply, with such directions as BAIFA may make to ensure the safeguarding or confidentiality of all its resources.

If requested by BAIFA, TSI shall sign an information security and confidentiality agreement provided by BAIFA and attest that its employees, representatives, agents, and subcontractors involved in the performance of this Agreement shall be bound by terms of a confidentiality agreement with TSI substantially the same in its terms.

4.4.6. Notice of Security Breach

TSI shall immediately notify BAIFA when it discovers that there may have been a breach in security which has or may have resulted in compromise to PII. For purposes of this section,

immediately is defined as within two (2) hours of discovery. The BAIFA contact for such notification is as follows:

Privacy Officer
privacyofficer@mtc.ca.gov
(510) 817-5700

5. DESIGN, IMPLEMENTATION AND TESTING OF ELN TCS

5.1. GENERAL OBLIGATIONS

TSI shall perform all planning, design and software development services and complete all corresponding submittals required in Attachment A, Scope of Work.

5.2. INTENT OF AGREEMENT

The intent of the Agreement is to describe complete items to be procured. Where the Agreement requirements describe items in relation to performance, but not in complete detail, the best industry practice shall be followed.

5.3. SUBMITTALS

TSI's submittal requirements shall be as set out in Attachment A-2, Implementation Requirements, at section 1.3.6, for deliverables, and shall comply with the schedule in Attachment B, Project Schedule and Milestones.

5.4. APPROVALS

Required TSI submittals are governed by the applicable sections of Attachment A, Scope of Work. BAIFA will review and approve or reject such submittals according to the applicable provision of Attachment A-2, Implementation Requirements.

Submittals inconsistent with any requirements of this Agreement shall not constitute a revision of such requirement unless the requirement is revised by change order pursuant to Article 12.

5.5. MATERIALS

TSI shall furnish all materials required to complete the work, except for BAIFA-furnished material as indicated. As used in this Article, the term "materials" shall mean materials and equipment furnished or items being procured. Notwithstanding any prior inspection or approval, only materials conforming to the requirements of the Agreement shall be incorporated. The materials furnished shall be new except as may specifically be provided elsewhere in the Agreement. TSI shall submit to the Project Manager a list of its sources of materials. The list shall be submitted in sufficient time to allow the Project Manager to provide for inspection and testing of materials in advance of their use if desired. TSI shall furnish samples as indicated in Attachment A,

Scope of Work. Inspections and tests may be made by BAIFA as indicated. If made at any point other than the equipment delivery site, they shall in no way be considered as an indication of acceptance of any material that may be delivered later for incorporation in the Work.

5.6. TESTING

The prices in Attachment C, Price Forms, include full compensation for any testing performed by TSI under the Agreement. All costs incurred to remedy items found not to be compliant with the specifications shall be borne by TSI.

5.7. SYSTEM ACCEPTANCE

System Acceptance will be achieved when BAIFA determines that TSI has complied with the completion requirements set forth in Attachment A- 2, Implementation Requirements, for such System Acceptance. At a minimum, in order for System Acceptance to be considered by BAIFA to have occurred, BAIFA must have received all Project documents, drawings, software, hardware, interface, test data, manuals and other deliverables for the Project required under this Agreement. Further, TSI shall have successfully completed the Acceptance Testing and all of TSI's other obligations under Attachment A-2. TSI must have also submitted all requests for Change Orders, disputes of change notices/orders, and claims under Articles 12 and 13 related to Milestone Series 1 through 5, or a statement that no such requests, disputes or claims will be applied for or made and an Affidavit that all subcontractor debts and claims have been paid and/or settled.

6. MAINTENANCE OF BAIFA ELN TCS

6.1. GENERAL OBLIGATIONS

TSI's responsibilities for maintaining the BAIFA ELN TCS are set forth in the Attachment A, Scope of Work.

6.2. OPERATING POLICY

All policy decisions regarding the Project's operations shall rest with BAIFA.

6.3. OWNERSHIP OF PROJECT EQUIPMENT AND SUPPLIES

Subject to Article 4, Rights in Data, upon Project Completion, as defined in Article 8.1, as between BAIFA and TSI, BAIFA shall own all materials and equipment, including computer hardware, and supplies purchased under this Agreement.

6.4. PROHIBITION AGAINST TAMPERING

TSI is prohibited from employing any electronic or other means of altering the performance data measurement. Tampering with, falsely reporting or artificially enhancing performance data is

a material breach of this Agreement, subjecting the TSI to termination for default pursuant to Article 15.2.

7. WARRANTIES

7.1. WARRANTY TERM

The TSI's warranties under Articles 7.2 and 7.5 shall begin at Agreement execution and remain in effect for one year from the date of Project Completion, as defined in Article 8.1, Project Completion. The TSI's warranties under Articles 7.3 and Article 7.4 shall commence at agreement execution and shall be perpetual.

7.2. TSI WARRANTIES

TSI's warranties shall be in accordance with Attachment A, Scope of Work. TSI warrants that all materials, equipment, and other hardware items provided by the TSI for the Project (a) shall meet the applicable requirements of Attachment A, (b) shall be new at the time furnished, and (c) shall be free of all liens, encumbrances and other rights and interests of third parties. TSI, at its option, will, at no charge, either repair any warranted product not meeting these requirements with new or reconditioned parts, or replace it with the same or an equivalent product. Such repair or replacement is subject to the notice provisions set forth herein, and to the provisions in Attachment A-3, Maintenance and Warranty Requirements. Repaired or replaced hardware products are warranted for the balance of the original applicable warranty period. All removed parts shall become the property of TSI.

TSI warrants that Project software will be free from defects that materially vary from the functional requirements and specifications in the Agreement. In addition, TSI makes no independent warranty as to any commercial off-the-shelf software, however, TSI will pass along the software provider's warranty, to the extent the terms of such warranty permit it.

BAIFA shall notify the TSI in writing, including by e-mail, or by telephone confirmed in writing, after discovery of a discrepancy or defect covered by the warranties set forth herein. TSI's warranty responsibilities hereunder shall be contingent upon BAIFA providing such notice within the Agreement's warranty period, except that if such discrepancy or defect is one of which TSI knew or should have known, as a result of its maintenance responsibilities under the Agreement, such notice shall be deemed given. As soon as practicable, and in any event within ten (10) days after receiving BAIFA's notice, the TSI shall propose a recommended method of correcting the discrepancy or defect that meets all requirements of the Agreement and involves the least loss of operating time.

If BAIFA determines that it would be inefficient or impractical for the TSI to perform the corrective work, or that the TSI is unwilling or unable, for whatever reason, to perform the corrective work in the manner or within the time required by the Agreement, BAIFA reserves the right to perform the corrective work itself, or to select another firm or entity to perform the corrective work. If such corrective work by BAIFA or another firm or entity occurs because TSI is unwilling or unable to perform the work in accordance with the Agreement, such corrective work shall be at TSI's expense, provided that TSI is kept informed as to the details and costs of any such corrective work. The party performing such corrective work shall warrant the corrective work performed directly to BAIFA.

Unless otherwise required by BAIFA, the TSI shall perform the corrective work required to satisfy this warranty as rapidly as practicable, and in any event within 60 days from the date such corrective work was begun, unless the extent of the corrective work reasonably requires a longer period of performance. The TSI shall perform the corrective work and shall procure required materials using the fastest means available in order to minimize BAIFA's loss of operating time.

7.3. PATENT AND COPYRIGHT WARRANTY

TSI represents and warrants that it will have all necessary patent, copyright, and any other necessary intellectual property rights to Work Products, software, and other deliverables furnished by TSI under the Agreement (referred to in this Article 7.3 as "Such Deliverables").

In case any Such Deliverables or its use under the Agreement is held to constitute an infringement of the patent rights or copyrights of a third party and its use is enjoined, the TSI, at the TSI's sole cost and expense, shall promptly and in consultation with BAIFA: (a) secure for BAIFA the right to continue using said Such Deliverables by suspension of the injunction or by procuring a royalty-free, perpetual, and transferable license(s); or (b) replace Such Deliverables with a non-infringing substitute that meets the requirements of the Agreement; or (c) modify Such Deliverables so that they become non-infringing, consistent with the requirements of the Agreement; or (d) if (a) through (c) are not reasonably practicable, remove Such Deliverables and refund to BAIFA the sums paid therefor without prejudice to any other rights of BAIFA. If the amount of time necessary to proceed with one of these options is deemed excessive by BAIFA, BAIFA may direct the TSI to select another option or risk default. Nothing in this Article shall be deemed to limit or condition BAIFA's rights under Article 10.2.2.

7.4. TITLE WARRANTY

TSI warrants that it owns or will own, and has or will have, good and marketable title to all goods, materials, equipment, tools, supplies, systems or equipment furnished or to be furnished, by

it and its subcontractors that become part of the ELN TCS or are purchased for BAIFA for the operation, maintenance or repair thereof, free and clear of all encumbrances.

TSI warrants that the title conveyed under the terms of this Agreement shall be good and that all goods, materials, equipment, tools, supplies, systems or equipment shall be delivered to the Site free from all security interests or other liens or encumbrances. TSI also agrees to defend the title against all persons claiming the whole or part of any goods, materials, equipment, tools, supplies, systems or equipment.

7.5. WARRANTY OF SERVICES

In the performance of its services under this Agreement, TSI represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, TSI shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.

In the event that any services provided by TSI hereunder are deficient because of TSI's or subcontractors failure to perform said services in accordance with the warranty standards set forth above, BAIFA shall report such deficiencies in writing to the TSI within a reasonable time. BAIFA thereafter shall have:

- A. The right to have TSI re-perform such services at the TSI's expense; or
- B. The right to have such services done by others and the costs thereof charged to and collected from the TSI if within 30 days after written notice to TSI requiring such re-performance, TSI fails to give satisfactory evidence to the BAIFA that it has undertaken said re-performance; or
- C. The right to terminate the Agreement for default. TSI shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

8. PROJECT COMPLETION AND TRANSITION

8.1. PROJECT COMPLETION

Project Completion will occur when BAIFA determines that all obligations under this Agreement have been met by TSI and all of the following have occurred:

- A. BAIFA has received all documents, drawings, software, interface data, test data, manual, and other deliverables for the Project required under the Agreement;

- B. TSI has submitted all requests for Change Orders, disputes of change notices/orders, or claims under Articles 12 and 13, or a statement that it will not submit such requests, disputes, or claims; and
- C. Retentions owing to TSI have been released by BAIFA.

8.2. TRANSITION AT END OF AGREEMENT TERM

8.2.1. End of Agreement

TSI shall perform the end of Agreement responsibilities as specified in the Agreement Documents or as otherwise directed by BAIFA.

8.2.2. Transition

Prior to Project Completion the TSI shall accomplish a complete transition of the Project from TSI to BAIFA, or to any replacement provider designated by BAIFA. TSI shall not, through any act or omission, cause any interruption of or adverse impact to any component of the Project, any other work provided by BAIFA or BAIFA-designated third parties, or BAIFA's customers. TSI shall cooperate fully in developing and implementing a transition plan with BAIFA or such BAIFA-designated replacement provider and promptly take all steps required to assist in effecting a complete and seamless transition.

The transition plan shall include all, but not be limited to, the following: a listing of all systems, hardware and software, on which training will be required, and training schedule. Such training shall include training of BAIFA personnel or of a third party contractor in the operation of the TSI software systems. TSI shall also provide the most current Project documentation in its native file format. If so requested, TSI shall provide all instructors, literature, training aids, and equipment reasonably necessary to train personnel to operate and maintain the Project, which shall be turned over to BAIFA at the termination of the Agreement. All work related to such transition shall be performed by the TSI at no additional cost.

8.2.3. Condition of Assets

By the end of the Agreement term, all Project assets shall be in a state of good repair, subject to BAIFA's sole discretion in the determination of normal wear and tear and the remaining useful life of the project assets.

8.2.4. Failure to Comply

The Parties acknowledge and understand that TSI's failure to comply with the terms and conditions as stated in this Article 8 may adversely affect BAIFA and result in monetary loss to BAIFA. BAIFA shall assess, audit, and certify to the TSI monetary losses resulting from the TSI's failure to comply with contract provisions. BAIFA's reasonable determination as to the amount of

the monetary loss suffered shall be conclusive and TSI shall compensate BAIFA for such loss within thirty (30) days of such a determination by BAIFA.

9. SUBCONTRACTORS

9.1. GENERAL

9.1.1. Approved Subcontractors

Subcontractors approved by BAIFA for subcontract work under this Agreement are listed in Attachment E, Subcontractor List, attached hereto and incorporated herein by this reference. Attachment E, Subcontractor List, shall be consistent with, and TSI shall use the subcontractors identified in its Proposal. Any substitution of, or shifting of work among the subcontractors listed in Attachment E must be approved in writing by BAIFA's Project Manager in advance of assigning or re-assigning work to a substitute subcontractor. Substitution of subcontractors shall be in accordance with California Public Contracts Code §4100, as applicable.

9.1.2. Subcontractor Agreements

Any subcontractors must be engaged under written contract with the TSI with provisions allowing the TSI to comply with all requirements of this Agreement, including without limitation Article 4.2..3, Ownership of Work Products. Failure of a subcontractor to provide insurance in accordance with Article 11, Insurance Requirements, shall be at the risk of TSI.

Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under this Agreement. TSI shall ensure that, when prevailing wage rates are applicable to work performed under the Agreement, they shall apply to labor performed under subcontracts or by assignment.

9.1.3. TSI's Subcontractor Obligations

Nothing contained in this Agreement or otherwise, shall create any contractual relation between BAIFA and any subcontractors, and no subcontract shall relieve TSI of his/her responsibilities and obligations hereunder. TSI agrees to be as fully responsible to BAIFA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by TSI. TSI's obligation to pay its subcontractors is an independent obligation from BAIFA's obligation to make payments to TSI.

9.1.4. Subcontractors' Claims

Any claim by TSI for additional compensation or schedule extension based on a subcontractor's claim shall be passed on to BAIFA for review only after an independent review and determination by TSI that such subcontractor's claim has merit under the terms and conditions of the Agreement.

9.2. ASSIGNMENT OF SUBCONTRACTS TO BAIFA

Each instrument evidencing any agreement of TSI with any subcontractor shall provide, pursuant to terms in form and substance satisfactory to BAIFA, that (a) the rights of TSI under such instrument are assigned to BAIFA contingent only upon written request from BAIFA or its successor or assignee following Agreement termination or expiration; and (b) all warranties (express and implied) of such subcontractor shall inure to the benefit of BAIFA.

9.3. SUBCONTRACT RECORDS

TSI shall allow BAIFA access to all subcontracts and records regarding subcontracts, consistent with Article 14.4, Audits, and shall deliver to BAIFA, within thirty (30) days after execution, true and complete copies of all subcontracts.

10. RISK ALLOCATION

10.1. FORCE MAJEURE

TSI shall not be responsible for any delays in performance resulting from a "Force Majeure" event, i.e., any event beyond the control of TSI and not due to an act or omission of TSI that materially and adversely affects TSI's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by TSI, including the following:

1. Any earthquake, hurricane, flood or other natural disaster;
2. Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion, disastrous or extensive fire or explosion, act of terrorism, or strike;
3. Any change in a governmental rule or regulation, or change in the judicial or administrative interpretation of a governmental rule or regulation, or adoption of any new governmental rule or regulation that imposes significant additional costs or delays on TSI and that was not reasonably foreseeable at the Proposal Date; or
4. A court order restraining, enjoining, or delaying construction of the Project or the granting or renewal of any governmental approval that is necessary to the Project.

At BAIFA's sole discretion, TSI shall be granted an extension of time to compensate for the delay in the completion of its Work caused by a Force Majeure Event, provided that the TSI establishes that the Work would have been completed in a timely manner but for the Force Majeure event, that the TSI has taken reasonable precautions to prevent delays due to such event, and provided that the TSI has complied with the notice and other provisions of Article 12.2.3, TSI-Initiated Change Orders. The above-indicated causes for which extensions of time have been granted hereunder shall not in and of themselves entitle TSI to additional compensation, except as provided in Article 12.2.4, Extensions for Certain Delays.

10.2. INDEMNIFICATION

10.2.1. General

To the maximum extent permitted by law, TSI shall indemnify, keep and hold harmless BAIFA and those entities (if any) identified as additional insureds in Article 11.9 and their commissioners, directors, officers, agents, and employees ("BAIFA Indemnified Parties") against any and all demands, claims, suits or actions arising out of any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by TSI caused by any breach of the Agreement or negligent act or omission or willful misconduct of the TSI or its officers, employees, subconsultants or agents.

TSI further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BAIFA Indemnified Parties, TSI shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable.

Notwithstanding any other provision to the contrary, the parties agree to submit to mediation pursuant to Article 13.3.2, Controversies Subject to Alternative Dispute Resolution, in the event they cannot come to an agreement concerning their respective obligations to defend claims, etc. under this Article 10.2.1 because of a causation dispute.

10.2.2. Patent and Copyright Infringement

TSI shall indemnify, defend and hold harmless BAIFA Indemnified Parties, and any or all of their commissioners, officers, and employees, including temporary BAIFA employees, from and

against any and all claims, liabilities, losses, damages or expenses (including reasonable attorneys' fees and related costs, whether or not litigation has commenced) arising out of, relating to, or based on the allegation that Work performed or delivered by TSI for the Project or any portion thereof, or that any portion of the Project that was performed or delivered by TSI, infringes the proprietary and intellectual property rights of any third party in or to any invention, patent, copyright or any other rights, provided that (a) BAIFA notifies TSI in writing promptly but not more than thirty (30) days after BAIFA has actual notice of the claim; and (b) BAIFA gives TSI information and reasonable assistance for the defense. If TSI fails or refuses to defend any such claim, BAIFA may assume control of the defense, and TSI shall indemnify and hold BAIFA harmless for all fees, costs and expenses associated with or arising from such defense.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10.3. RISK OF DAMAGE AND LOSS

10.3.1. Risk of Loss of Toll Collection Revenue

At all times throughout the term of this Agreement or any extension thereof, TSI shall bear all risk of loss to toll revenue collected by the ELN TCS and due to any failure by the ELN TCS to properly process data, except for loss caused by the sole negligence or wrong-doing of BAIFA.

10.3.2. Risk of Damage and Loss to ELN TCS

Until Project Completion, TSI shall bear all risk of damage or loss to the ELN TCS, including all materials, equipment and property required for the implementation of the Project, including any ELN TCS equipment located off-site for repair or any other reason (with the exception of materials, equipment or property located at BAIFA's office or any other site the usage of which is controlled by BAIFA) except for damage and loss BAIFA agrees was caused by the sole negligence or wrong-doing of BAIFA. In the case of damage or loss that BAIFA agrees was caused by the sole negligence or wrong-doing of BAIFA, TSI must promptly replace the damaged or lost portions of the ELN TCS at TSI's cost, plus a 10% administrative markup fee, and submit the amount(s) thus expended to BAIFA for reimbursement as a clearly identified, separate item on its next invoice to BAIFA.

10.3.3. Foreseeable Circumstances

Except as otherwise provided in this Agreement all loss or damage arising from any obstruction or difficulties, reasonably foreseeable by TSI, whether natural or artificial, which may

be encountered in the prosecution of the Work, or the furnishing of the supplies, materials or equipment, or from any action of the elements prior to Project Completion, or from any act or omission not authorized by the Agreement on the part of the TSI or any agent or person employed by it shall be the responsibility of and be borne by TSI.

10.4. MITIGATION OF DAMAGES AND DELAYS

TSI agrees to take all reasonable and appropriate actions to mitigate damages in all circumstances, including re-sequencing, reallocating or redeploying its resources.

In the event of potential delay, TSI shall comply with Attachment A-2, Implementation Requirements, subsection 1.8.1. Failure to comply with these requirements shall result in a waiver of TSI's right to a time extension related to the cause or conditions resulting in delay.

10.5. PASSAGE OF TITLE

Title to all hardware and supplies purchased under this Agreement and still useful in the operation of the Project shall pass to BAIFA at System Acceptance, as defined in Article 5.7 or upon early termination pursuant to Article 15. TSI, at its own expense, shall execute any and all papers necessary to perfect BAIFA's ownership of hardware and supplies. Title to Work Products and TSI Data is governed by the provisions of Article 4.1.

11. INSURANCE REQUIREMENTS

11.1. MINIMUM COVERAGES

The insurance requirements specified in this section shall cover TSI's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that TSI authorizes to work under this Agreement (hereinafter referred to as "Agents.") TSI shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

TSI is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, TSI shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling TSI's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event TSI or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that TSI's insurance be primary without right of contribution from BAIFA. Prior to beginning work under this Agreement TSI shall provide BAIFA with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of TSI's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BAIFA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as TSI is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of TSI and TSI's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$1,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BAIFA.

BAIFA and those entities listed in Article 11.9 and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from TSI's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by TSI and TSI's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
4. Umbrella Insurance in the amount of \$9,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insureds requirements.
5. Professional Liability Insurance for Consultant's acts, errors and omissions including for any actual or alleged violations of service mark, trademark, trade name, copyright, or for plagiarism, or misappropriation of ideas and the resulting damages, including, but not limited to, economic loss to BAIFA and having minimum limits of \$5,000,000 per claim.

The policy shall provide coverage for all work performed by TSI and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the

TSI. No contract or agreement between TSI and any subcontractor/consultant shall relieve TSI of the responsibility for providing this Professional Liability (or Errors and Omissions) coverage for all work performed by TSI and any subcontractor/consultant working on behalf of TSI on the project.

6. Property Insurance. Property Insurance covering TSI's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAIFA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BAIFA.
7. TSIs' Pollution Liability Insurance. TSIs' Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. This insurance shall include coverage for, but not be limited to sudden and accidental discharges; gradual discharges, clean-up of pollutants and disposal thereof; and, mold, asbestos or lead, if an abatement contract. If TSI disposes of Hazardous Materials under this Agreement, TSI shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAIFA.

TSI's Business Automobile Liability coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including, but not limited to, the perils of collision and upset. Coverage may be provided by endorsement to the general liability and automobile policies or by a separate policy.

Such policy shall contain a Waiver of Subrogation in favor of BAIFA.

BAIFA, those entities listed in subsection 11.9, Additional Insureds, below, and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from TSI's operations.

11.2. ACCEPTABLE INSURERS

All policies will be issued by insurers acceptable to BAIFA, generally with a Best's Rating of A-X or better.

11.3. SELF-INSURANCE

TSI's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BAIFA.

11.4. DEDUCTIBLES AND RETENTIONS

TSI shall be responsible for payment of any deductible or retention on TSI's policies without right of contribution from BAIFA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BAIFA seeks coverage as an additional insured under any TSI insurance policy that contains a deductible or self-insured retention, TSI shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of TSI, subconsultant, subcontractor, or any of their employees, officers or directors, even if TSI or subcontractor is not a named defendant in the lawsuit.

11.5. CLAIMS MADE COVERAGE.

If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, TSI shall:

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following Project Completion, including the requirement of adding all additional insureds; and
3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, TSI shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

11.6. FAILURE TO MAINTAIN INSURANCE

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of TSI's personnel, subcontractors, and equipment have been removed from BAIFA's property, and the work or services have been formally accepted. TSI must notify BAIFA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

11.7. CERTIFICATES OF INSURANCE

Prior to commencement of any work hereunder, TSI shall deliver to BAIFA Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all

provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

11.8. DISCLAIMER

The foregoing requirements as to the types and limits of insurance coverage to be maintained by TSI are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by TSI pursuant hereto, including, but not limited to, liability assumed pursuant to Article 10 of this Agreement.

11.9. ADDITIONAL INSURED

The following entities are to be named as Additional Insureds under applicable sections of Article 11.2 and as BAIFA Indemnified Parties, pursuant to the terms of Article 10.2.

California Department of Transportation; Metropolitan Transportation Commission; Bay Area Toll Authority; California Highway Patrol; Alameda County Transportation Commission; Sunol Smart Carpool Lane Joint Powers Authority; Santa Clara Valley Transportation Authority; Solano Transportation Authority; Contra Costa Transportation Authority

11.10. FINANCIAL SECURITY (BONDS)

Concurrent with the execution and delivery of the Agreement and prior to the commencement of any work under the Agreement, TSI has provided, and shall maintain in effect for the term of the Agreement unless otherwise specified herein, the following types of bonds, issued by a surety acceptable to BAIFA on forms acceptable to BAIFA, consistent with Attachment G to this Agreement as financial security for the Project:

11.10.1. Performance Bond.

The Proposer to whom the Agreement is awarded shall provide a Performance Bond in an amount not less than one hundred percent (100%) of the total cumulative total price of the Agreement. This amount shall be calculated by adding the amounts inserted by Proposer on Row E-32 on Cost Proposal Form C-1 (after subtracting Rows 3, Payment Bond and 4 Performance Bond) and the Row entitled "Total Agreement Maintenance Costs" on Cost Proposal Form C-2. The Performance Bond shall guarantee the TSI's faithful performance of the Agreement in compliance with all terms, conditions, and requirements specified in the Agreement. The Performance Bond is intended to secure but not cap nor limit any liability of the TSI for damages. Performance Bond, Implementation. If, due to Change Orders, this dollar amount increases by more than 10%, the TSI shall secure consent of surety increasing the penal amount of the Performance Bond to reflect the revised dollar amount.

11.10.2. Payment Bond.

The successful Proposer shall also provide a Payment Bond in the same penal amount as the Performance Bond. The Payment Bond shall provide BAIFA with security for the TSI's full payment to all subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of performing any work that may be required under the Agreement.

11.10.3. Bond Release and Reduction

The Performance and Payment Bonds shall remain in full force and effect until Project Completion. At System Acceptance, the penal amounts of the bonds may be reduced to no less than 100% of the product of the total monthly maintenance costs for the entire system (i.e. the sum of the amount inserted by Proposer in the last cell of the Row entitled "Sum Monthly Costs of System" on Cost Proposal From C-2) times the number of months remaining in the term of the Agreement after System Acceptance, with the consent of the surety.

12. CHANGES TO THE WORK

12.1. GENERAL

BAIFA reserves the right to make alterations to and permit deviations from the Agreement and to require such changes in the extent or manner of performance of the Work as are determined by BAIFA to be necessary, subject to the provisions of this Article 12. With the exception of changes subject to the process in 12.3, System Improvements, all changes to the Agreement shall be incorporated in a written change order, which shall specify the changes in work performed and any adjustments to compensation and schedule, signed by the BAIFA Executive Director or a designated representative and TSI. The BAIFA Project Manager is not a designated representative for the purposes of approving a change order.

12.2. CHANGE ORDERS

12.2.1. BAIFA-Initiated Change Notice

Each proposed change to the Agreement initiated by BAIFA pursuant to Article 12.2 will be initiated by means of a written Change Notice issued by BAIFA. The Change Notice will include a description of the scope of the proposed change and a request for TSI to submit a proposal for performance of the changed work, including all compensation and/or schedule impacts, as described in Article 12.2.2, TSI's Change Notice Proposal.

TSI shall have fourteen (14) days to review and respond to the Change Notice, unless BAIFA has specified a longer period. If TSI fails to respond to the Change Notice within the specified period, BAIFA may issue a preliminary Change Order, pursuant to Article 12.2.5, such to TSI's right to protest under Article 12.2.6, Protest.

12.2.2. TSI's Change Notice Proposal

TSI shall provide to BAIFA a Change Notice Proposal for providing the changed work within the time specified in the Change Notice. If TSI believes the changed work will have a schedule impact, the Change Notice Proposal must include changes to the Approved Project Schedule.

The Change Notice Proposal shall contain cost or price information sufficient to allow BAIFA to make a determination that any increase in compensation to TSI is fair and reasonable. TSI shall use the hourly rates stated in Attachment C-4, Hourly Labor Rates, in preparing its Change Notice Proposal, unless otherwise agreed by the BAIFA Project Manager. If cost reasonableness cannot be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities, or on the basis of prices set by law or regulation, TSI is required to submit detailed cost breakdowns, including information on labor and materials costs, overhead and other indirect costs.

If TSI believes the changed work will have a schedule impact, the Change Notice Proposal must include changes to the Approved Project Schedule.

BAIFA will review the Change Notice Proposal, and the parties shall negotiate in good faith to determine the final terms and conditions of the Change Order and equitable adjustments to Attachment C, Price Forms, and/or Approved Project Schedule. If the parties cannot agree on terms, BAIFA may issue a preliminary Change Order, subject to TSI's right to protest under Article 12.2.6.

12.2.3. TSI-Initiated Change Orders

Should circumstances arise which, in the opinion of the TSI, justify additional compensation or time or require changes in the Work specified by the Agreement, TSI may initiate a Change Order by written request, including sufficient information regarding cost and schedule to provide a basis for negotiation with BAIFA, as provided in Article 12.2.2, TSI's Change Notice Proposal, including references to applicable provisions of the Agreement; the factual reasons for which TSI believes a revision to the Specifications, additional compensation, or a schedule extension is called for; and an estimate of any cost increase or schedule extension.

TSI shall meet with the BAIFA Project Manager or any other designated representative of BAIFA involved in evaluating the TSI's request for a Change Order. Following such discussion(s), BAIFA will either: (i) issue a Change Order for TSI's signature under Article 12.2.5; (ii) issue a written denial of TSI's request for a Change Order; or (iii) accept the request in part and deny it in part. If TSI agrees with the terms and conditions of a Change Order, TSI shall sign a copy of the Change Order and return it to the BAIFA Project Manager, and TSI shall promptly proceed with the

work as indicated therein. If TSI disagrees with BAIFA's action, it may file a protest under Article 12.2.6. If the TSI fails to protest in accordance with the applicable procedures, TSI shall not be entitled to file a claim for additional compensation or schedule extension or other remedy under Article 13 for the change other than those specified in the Change Notice. Notwithstanding any request for a Change Order, TSI's duty to complete the Work in accordance with the provisions of the Agreement shall not be postponed or abated.

12.2.4. Extensions for Certain Delays

TSI may request a Change Order under Article 12.2.3, above to the extent that TSI has been delayed by a Force Majeure Event under Article 10.1. In such event, an extension of the appropriate Payment Milestone or Guaranteed Completion Date commensurate with the delay thus caused will be granted, provided that TSI has complied with the notice and other procedures set forth herein. If, in addition, TSI has suffered actual losses as a result of the delay; TSI took all reasonable precautionary and remedial actions, and was not able to fully mitigate such actual losses through insurance or otherwise; and the delay was not within the contemplation of the Agreement, then BAIFA shall pay the TSI the net amount of the unmitigated actual loss, provided that TSI has complied with the notice and other claims procedures set forth herein. Actual loss for delays shall be understood to include no items of expense other than reasonable, verified amounts, including documented indirect costs. TSI may file a protest under Article 12.2.6 or file a claim pursuant to Article 12.2 if BAIFA denies a request for a delay-related extension.

12.2.5. Change Order Issuance

Change Orders shall be issued by BAIFA as soon as practicable after their initiation by either party.

BAIFA may issue a Preliminary Change Order if it does not receive a TSI response to a Change Notice or if it agrees in part and disagrees in part to a TSI-initiated Change Notice. If TSI disagrees with the terms and/or conditions of the Preliminary Change Order, TSI may file a protest under Article 12.2.6.

BAIFA shall issue a Change Order if the terms of the Change Order have been agreed to by TSI or if TSI's protest of a Preliminary Change Order has been denied. If TSI agrees with the terms and conditions of such Change Order, TSI shall sign the Change Order and return it to the BAIFA Project Manager.

If TSI fails to protest a Preliminary Change Order, in accordance with the procedures in Article 12.2.6, TSI shall not be entitled to any claim for additional compensation or schedule extension arising out of or relating to any change in the Work other than that specified in the Change Order, and payment will be made as set forth in the Change Order. Such payment shall

constitute full compensation and schedule adjustment for any Work required therein, or all events giving rise to a TSI requested Change Order. TSI will be deemed to have consented to the terms and conditions set forth in any Preliminary Change Order that TSI does not dispute within ten (10) days or such other reasonable time period stated in the Preliminary Change Order for protest.

The following constitute amendments of the Agreement: (a) a Change Order signed by both parties; (b) a Change Order issued by BAIFA based on a Preliminary Change Order that was not protested by TSI in accordance with Article 12.2.6 or, if protested, was decided against TSI; and (c) a revised Change Order signed by the parties as a result of a claim filed pursuant to Article 12 decided in favor of TSI. When the Change Order becomes effective for any of these reasons, TSI shall promptly proceed with the Work as indicated in the Change Order. All documentation related to or impacted by a Change Order shall be updated and submitted for review and approval by BAIFA in accordance with Attachment A, Scope of Work.

12.2.6. Protest

TSI shall have ten (10) days from receipt of a BAIFA denial of a TSI-Initiated Change Notice or a Preliminary Change Order from BAIFA to protest any of its terms to the BAIFA Executive Director. Thereafter, TSI shall have up to ten (10) additional days to supplement its protest with additional information or documentation in support of its protest. The BAIFA Executive Director shall appoint a review officer to review the protest, and shall respond within twenty (20) days to TSI. BAIFA and TSI agree to negotiate in good faith to resolve disputed Change Orders.

An undisputed Change Order, and any disputed Change Order for which TSI's protest is denied, shall be considered as part of the Agreement, and is subject to the claims provisions in Article 12.

This protest procedure shall apply to other disputes by TSI of discretionary decisions made by BAIFA under the Agreement.

12.2.7. Change Order Records

For cost data submitted in connection with Change Orders, unless such data is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, BAIFA and its representatives (for purposes of this Article 12.2.7, "BAIFA") have the right to examine all books, records, documents and other data of TSI related to the negotiation of or performance of Work under such Change Orders, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed

necessary by BAIFA to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

12.2.8. Exclusive Remedies

The procedures specified in this Article 12 are TSI's remedy of first resort for compensation for actual or constructive changes or delays. Claims resulting from actual or constructive changes or delay not first made through the procedures specified in this Article 12 are not permitted and are hereby waived by TSI. No course of conduct or dealings between the parties, no express or implied acceptance of changes or alterations to the Work, and no claim that BAIFA has been unjustly enriched by an alteration or change to the Work, shall be the basis of any other claim for an increase in compensation or extension in the time for completion of the Work.

12.3. SYSTEM IMPROVEMENTS

Following System Acceptance, System Improvements are project improvements that change, improve or add functionality to the way the TCS delivers its existing service to better meet user needs or improve back-end processes. These changes are distinguishable from ongoing maintenance in that they are not intended to remedy system defects, and, if not completed, the system would continue to operate per the functional requirements per the performance standards. Improvements estimated to require ten (10) or fewer person hours to complete are considered ongoing maintenance tasks regardless of their purpose or complexity and shall be accomplished without an adjustment in cost. System Improvements will be executed through task orders mutually agreed upon between BAIFA and the TSI prior to execution. They are further broken into two sub-categories: Optimizations and Enhancements.

12.3.1. Optimizations

Optimizations are System Improvements that are estimated to require at least 10 hours to complete and that are relatively uncomplicated. There will be one "blanket task order" written to accommodate potential optimizations during the course of this Agreement. This Optimizations Task Order will establish a dollar amount to be allocated for optimization work. Specific optimization tasks shall be identified on an on-going basis by BAIFA and TSI task leads. Optimizations shall be approved by BAIFA.

12.3.2. Enhancements

Enhancements are System Improvements that are complicated, estimated to require at least 41 person hours to complete, and will require deliberate planning to allow BAIFA and the TSI to manage their potential impacts on core services, their complexity, and their potential risks. The 41-hour threshold does not automatically classify a system improvement as an Enhancement. The

complexity and planning requirements of the work must also be considered when classifying the task as an Optimization or Enhancement, which shall be determined by BAIFA. Each Enhancement will be authorized by an individual Task Order negotiated and signed by BAIFA and the TSI. These Task Orders will specify the scope, schedule, budget and payment provisions for work to be performed (e.g., time and materials or deliverables).

13. CONFLICT RESOLUTION AND CLAIMS

13.1. TSI'S OBLIGATIONS

Failure by BAIFA to pay any amount in dispute shall not alleviate, diminish or modify in any respect TSI's obligation to perform under the Agreement, including TSI's obligation to achieve Project Completion and to complete all Work in accordance with the Agreement, and TSI shall not cease or alter its performance under the Agreement on account of any such amount.

13.2. CLAIMS OR DISPUTES

TSI shall be solely responsible for providing timely written notice to BAIFA of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is BAIFA's intent to investigate and attempt to resolve any TSI claims before TSI has performed any disputed work. Therefore, TSI's failure to provide timely notice shall constitute a waiver of TSI's claims for additional compensation and/or time.

TSI shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by BAIFA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given BAIFA due written notice of a potential claim. The potential claim shall set forth the reasons for which TSI believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to BAIFA no later than thirty (30) working days following either the occurrence of the event on which such claim is based or the date on which the TSI knew or should have known of the event, or where TSI disputes the result of a protest under Article 12.2.6 no later than twenty (20) working days of its receipt of BAIFA's response to the protest. In no event shall a claim be made after TSI has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, TSI shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BAIFA, and shall be governed by all applicable provisions of the Agreement. TSI shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves TSI's claim, the parties will execute an

Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the TSI claim, they may choose to pursue dispute resolution pursuant to Article 13.3, Dispute Resolution, or BAIFA may terminate the Agreement.

13.2.1. Final Claim

Within 30 days after the date of Project Completion, as defined in Article 8.1, TSI shall prepare and present to the BAIFA Project Manager a Proposed Final Invoice, showing the proposed total amount of compensation previously paid and remaining to be paid under the Agreement including all amounts retained.

13.2.2. BAIFA Payment of Final Invoice

All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. BAIFA will review TSI's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within thirty (30) days of its receipt or, in the case of a Final Invoice accompanied by one or more claims, within sixty (60) days.

Based on BAIFA's response, TSI shall submit a Final Invoice incorporating any changes or corrections made by BAIFA, together with any additional requested information or documentation. If BAIFA agrees with all requests for compensation in the Final Invoice, BAIFA will pay the entire sum found due within thirty (30) days of its receipt and will provide TSI with a copy of an Approved Final Invoice. If BAIFA does not agree with any amounts claimed as compensation, BAIFA shall respond in writing, within such thirty (30) day period, identifying those items in the Final Invoice that BAIFA is refusing to pay, along with a written explanation of the basis of the rejection. If BAIFA fails or refuses to act on a Final Invoice within the required time period, the claim shall be deemed to have been rejected by BAIFA on the last day of the period within which BAIFA was required to respond.

Upon final determination of all TSI's claims for payment in the Final Invoice, BAIFA shall pay the entire sum BAIFA finds due without prejudice to the rights of either BAIFA or TSI in connection with such disputed sums.

13.3. DISPUTE RESOLUTION

13.3.1. Informal Resolution of Disputes.

TSI and BAIFA shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that BAIFA provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, BAIFA's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon TSI's written acceptance of

the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, BAIFA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

If the Project Manager's determination is not accepted by TSI, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty calendar (30) days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

13.3.2. Controversies Subject to Alternative Dispute Resolution.

Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between BAIFA and TSI which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution, specifically mediation.

13.3.3. Other Remedies.

If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in either the Superior Court of California for the County of Alameda or the Federal District Court for the Northern District of California. Nothing herein shall alter the requirements of Government Code Section 910 *et seq.* with respect to initiating a civil action against BAIFA.

13.3.4. Pending Resolution.

The TSI shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BAIFA, and shall be governed by all applicable provisions of the Agreement. Likewise, BAIFA will continue to make non-disputed payments on non-disputed work during the dispute resolution process.

13.3.5. Cost of Alternative Dispute Resolution Proceedings.

Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

13.3.6. Survival of this Article.

This Article shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute

arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

14. ADMINISTRATIVE AND STATUTORY REQUIREMENTS

14.1. LAWS AND REGULATIONS

TSI shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BAIFA that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on BAIFA as a recipient of federal or state funds are hereby in turn imposed on TSI.

14.2. STATE OF CALIFORNIA REQUIREMENTS

14.2.1. Antitrust Claims

The TSI's attention is directed to California Government Code §4552, which shall be applicable to the TSI and its subcontractors:

"In submitting a proposal to a public purchasing body, the Proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer."

14.2.2. Fair Employment Practices: California Fair Employment And Housing Act

In the performance of the Agreement, TSI agrees that it will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age in any manner prohibited by law. TSI shall take affirmative action to ensure that applicants are hired and that employees are treated during employment in accordance with this non-discrimination obligation. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. TSI shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this article.

14.3. RECORDS

TSI agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. TSI further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

14.4. AUDITS

TSI shall permit BAIFA and its authorized representatives to have access to TSI's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14.3, Records. TSI shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

TSI further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that BAIFA, or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

14.5. SOLICITATION OF AGREEMENT

TSI warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for TSI, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for TSI, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, BAIFA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from TSI's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

14.6. PROHIBITED INTERESTS

TSI covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to BAIFA. TSI further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of BAIFA, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, TSI further covenants that it has made a complete disclosure to BAIFA of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of BAIFA (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BAIFA.

14.7. ORGANIZATIONAL CONFLICTS OF INTEREST

TSI shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BAIFA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

TSI shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement TSI becomes aware of an organizational conflict of interest in connection with the work performed hereunder, TSI shall immediately provide BAIFA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. TSI's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BAIFA becomes aware of an organizational conflict of interest in connection with TSI's performance of the work hereunder, BAIFA shall similarly notify TSI. In the event a conflict is presented, whether disclosed by TSI or discovered by BAIFA, BAIFA will consider the conflict presented and any alternatives proposed and meet with TSI to determine an appropriate course of action. BAIFA's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject the TSI to damages incurred by the BAIFA in addressing organizational conflicts that arise out of work performed by TSI, or to termination of this Agreement for breach.

14.8. PUBLIC WORKS PROVISIONS

14.8.1. Applicability

The provisions contained in this Article 14.8 are applicable to any public works components of the Project. Public Work has the same meaning as defined in California Public Contract Code §1101 and California Labor Code §1720, as applicable.

14.8.2. Prevailing Wages and Use of Apprentices

TSI shall comply with California Labor Code §1720 *et seq.* and Title 8 of the California Code of Regulations §16000 *et seq.* governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to installation or any other public work performed under this Agreement. In particular, TSI's attention is drawn to Labor Code Sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices).

14.8.3. State Labor Code

TSI shall comply with California State Labor Code §§1774 and 1775. In accordance with said §1775, TSI shall forfeit as a penalty to BAIFA not more than \$200 for each calendar day or portion thereof for each worker paid less than the prevailing wage rates determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by TSI or by any subcontractor under the Agreement (in violation of the provisions of the California State Labor Code and, in particular, State Labor Code §§1770 to 1780, inclusive). The amount of forfeiture shall be determined by the Labor Commissioner based on specified factors pursuant to said §1775. In addition to said penalty and pursuant to said §1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the TSI. The Agreement shall be binding upon and inure to the benefit of BAIFA and TSI and their permitted successors, assigns and legal representatives.

14.8.4. Payroll Records

The TSI shall comply with the provisions of State Labor Code §§1776 and 1812, and shall be responsible for compliance by its subcontractors. The penalties specified in the Labor Code for noncompliance may be deducted from any monies due which may become due to the TSI.

14.8.5. TSI Inspection

The TSI shall inspect all materials, supplies and equipment that are to be used, consumed or incorporated in the Work, and provide records of such in a manner determined by the BAIFA Project Manager. In addition, TSI shall conduct a continuous program satisfactory to the BAIFA Project Manager or designee of construction quality control for all Work performed under this Agreement. The TSI shall have the primary responsibility for inspecting the Work and materials; the Project Manager or designee's inspection is conducted to verify that the TSI has performed its inspections. Any observation, verification, inspection, or approval of the Work or materials by BAIFA shall not relieve the TSI of any of TSI's obligations to fulfill the Agreement as prescribed. Work and materials not meeting Agreement requirements shall be made acceptable, and unsuitable work or materials may be rejected, notwithstanding that payment for such Work or materials may have been previously authorized and included in a progress payment.

15. BREACH, TERMINATION, DEFAULT

15.1. REMEDIES FOR BREACH

In the event TSI fails to comply with the requirements of the Agreement in any way, BAIFA reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BAIFA or TSI shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

15.2. TERMINATION FOR THE CONVENIENCE OF BAIFA

BAIFA may terminate this Agreement, in whole or in part, at any time by written notice to TSI. Upon receipt of notice of termination, TSI shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BAIFA. TSI shall be reimbursed for costs incurred for incomplete Work, limited to only that Work authorized by a BAIFA NTP, conducted up to the time of termination; a reasonable profit not to exceed 5%; and reasonable termination costs, not to exceed the amount payable under the Agreement for such Work. Termination costs include losses that have been or will be reasonably and properly incurred by TSI as a direct result of the termination of the Agreement, but only to the extent that the losses are incurred in connection with the Project and in respect of the provision of

the Work where BAIFA has provided NTPs including: (i) any materials or goods ordered and/or subcontracts, rental or leasing contracts and/or insurance arrangements (including fees or penalties payable for early termination) placed that cannot be cancelled without such losses being incurred; (ii) any other expenditure and/or liability incurred in anticipation of the provision of the Work in the future that cannot be canceled or avoided; and/or (iii) the reasonable and justified costs of demobilization used in connection with the Work; provided that (a) the losses incurred under any such arrangements or agreements are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and (b) the TSI has reasonably mitigated such losses.

Subject to Article 4, any equipment, materials, Work Product and supplies paid for by BAIFA shall become, on payment, the property of BAIFA. If TSI has any property in its possession belonging to BAIFA, TSI will account for the same, and dispose of it in the manner BAIFA directs. Except as provided above, BAIFA shall not in any manner be liable for TSI's actual or projected lost profits had TSI completed the services required by this Agreement.

15.3. TERMINATION FOR TSI'S DEFAULT

15.3.1. Default Defined

Default by TSI shall include (a) breach of a material provision of the Agreement, and failure to correct such breach within the cure period provided below under the notice of default described in Article 14.3.2; or (b) a "Default Event", which includes any of the following occurrences:

1. TSI ceases to function as a going concern;
2. TSI makes an assignment for the benefit of creditors;
3. TSI becomes the subject of any proceeding under any application bankruptcy, receivership, insolvency or similar laws, which proceeding is not dismissed within thirty (30) days after it is instituted; or
4. TSI liquidates or dissolves substantially all of its assets.

The contractual remedy of termination for default is not available to TSI; TSI's sole remedies against BAIFA are under Article 12 and 13.

15.3.2. Termination for Default

If TSI does not deliver the Work specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if TSI fails to comply with any other material provision of the Agreement, BAIFA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day (or other reasonable period to be determined by BAIFA) advance written notice of termination on TSI, setting forth the manner in which TSI is in default. If TSI does not cure the breach or describe to BAIFA's satisfaction a

plan for curing the breach within the fifteen (15) day period (or other period specified by BAIFA), BAIFA may terminate the Agreement for default. In the event of such termination for default, TSI will be entitled to be reimbursed for work performed in full compliance with the contract requirements as follows: TSI shall be reimbursed for costs incurred for incomplete Work up to the time of termination, not to exceed the amount payable under the Agreement for such Work. Such reimbursement will be offset by any extra costs incurred by BAIFA to complete work required under the Agreement. In no event shall BAIFA be required to reimburse TSI for any costs incurred for work causing or contributing to the default. If TSI has any property in its possession belonging to BAIFA, TSI will account for the same, and dispose of it in the manner BAIFA directs. BAIFA shall not in any manner be liable for the TSI's actual or projected lost profits had the TSI completed the services required by this Agreement.

If it is determined by BAIFA that TSI's failure to perform resulted from unforeseeable causes beyond the control of TSI, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of TSI, BAIFA, after setting up a new delivery or performance schedule, may allow TSI to continue work, or treat the termination as a termination for convenience.

15.4. BAIFA OPERATION FOLLOWING NOTICE OF TERMINATION

BAIFA, in its sole discretion, may choose to take over or assign operation of the Project or any part of the Work following issuance of a notice of termination under Articles 15.2 and 15.3.

15.5. ACTIONS TAKEN FOLLOWING TERMINATION

Immediately upon receipt of a notice of termination, the TSI shall: (a) stop work under the Agreement on the date and to the extent specified in said notice; (b) terminate, unless otherwise directed by the BAIFA Project Manager, all orders and subcontracts to the extent that they relate to the performance of work terminated and place no further orders or subcontracts for materials, services or facilities, except as may be necessary for the completion of such portion of the work under the Agreement as is not terminated; (c) if directed by the BAIFA Project Manager, assign to BAIFA all of the right, title and interest of the TSI under any orders and subcontracts; (d) if directed by the BAIFA Project Manager, transfer title and deliver to BAIFA (i) work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and (ii) the completed or partially completed plans, drawings, manuals, information and other property which, if the contract had been completed, would have been required to be furnished to BAIFA; (e) complete performance of such part of the work as shall not have been terminated by said notice; (f) if

termination was effected pursuant to Article 15.2, submit any claim for termination costs; and (g) follow any other directions directed by the BAIFA Project Manager.

15.6. TEMPORARY SUSPENSION OF WORK

BAIFA, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as BAIFA may deem necessary. The suspension may be due to the failure on the part of TSI to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of TSI. The TSI shall comply immediately with the written order of BAIFA to suspend the work wholly or in part. The suspended work shall be resumed when TSI is provided with written direction from BAIFA to resume the work.

If the suspension is due to TSI's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the TSI, all costs shall be at TSI's expense and no schedule extensions will be provided by BAIFA.

In the event of a suspension of the work, TSI shall not be relieved of TSI's responsibilities under this Agreement, except the obligations to perform the work which BAIFA has specifically directed TSI to suspend under this section.

If the suspension is not the responsibility of TSI, suspension of all or any portion of the work under this Article may entitle TSI to compensation and/or schedule extensions subject to the Agreement requirements.

16. MISCELLANEOUS PROVISIONS

16.1. INDEPENDENT TSI

TSI is an independent contractor and not an employee or agent of BAIFA and has no authority to contract or enter into any agreement in the name of BAIFA. TSI has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by TSI who are assisting in the performance of services under this Agreement. TSI shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. TSI shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

16.2. REPRESENTATIVES

BAIFA and TSI shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Agreement. Either party may change its designated individual by a subsequent writing delivered to the other party.

16.3. SURVIVAL

All provisions that by their inherent character should survive termination of this Agreement shall survive the termination of this Agreement. These provisions include, without limitation, all those terms and conditions contained in Article 4, Rights in Data, Article 7, Warranties, Article 10.2, Indemnification, and Article 10.5, Passage of Title.

16.4. ASSIGNMENT

16.4.1. By TSI

TSI shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable

16.4.2. By BAIFA

BAIFA may, in its sole discretion, assign the Agreement, in whole or in part, to MTC, BATA or any authorized transportation or congestion management agency without the prior approval of TSI.

16.5. LANGUAGE

All specifications, manuals and other documents to be prepared under the Agreement shall be written in the English Language.

16.6. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State. Formal legal action brought as a result of this Agreement shall be venued as appropriate in either Alameda County Superior Court or the Northern District of California.

16.7. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

16.8. PARTIAL INVALIDITY

If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

16.9. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors and permitted assigns.

16.10. SECTION HEADINGS

Section headings in this Agreement are not intended to have any substantive meaning and shall not be considered relevant to the interpretation of the terms and conditions of the Agreement.

16.11. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. TSI represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the TSI and BAIFA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

BAY AREA INFRASTRUCTURE FINANCING
AUTHORITY

TOLL SYSTEM INTEGRATOR(TSI)

Steve Heminger, Executive Director

<Name, Title>

ATTACHMENT A, SCOPE OF WORK

The services to be performed by TSI shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the Work described in Attachments A-1 through A-4.

BAIFA may request additional services on an as-needed basis. All such services shall be authorized by Task Order, initiated and developed according to the detailed task order process described in Attachment A-5, Task Order Process, attached hereto and incorporated herein by this reference. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subcontractor participation (if any), in a completed form as shown in Attachment A-6, Task Order Form, attached hereto and incorporated herein by this reference.

Attachment A-1	System Requirements
Attachment A-2	Implementation Requirements
Attachment A-3	Maintenance & Warranty Requirements
Attachment A-4	Business Rules
Attachment A-5	Task Order Process
Attachment A-6	Task Order Form

ATTACHMENT A-5

TASK ORDER PROCESS

Detailed Task Order Process:

Task Orders will be numbered sequentially. The period of performance shall be as set forth in the individual Task Order. The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The BAIFA Project Manager (“BAIFA PM”) prepares a draft Task Order to issue to TSI. The BAIFA PM may solicit feedback from TSI to facilitate drafting the Task Order.

Step 2* – TSI prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-6, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to TSI for review and comment.

Step 3* – The BAIFA PM reviews TSI’s proposal to determine if it meets the objectives of the draft Task Order and if TSI’s proposed costs are reasonable. The BAIFA PM may solicit early feedback from the BAIFA **SECTION DIRECTOR** at this time, if necessary. Any changes to the draft Task Order deemed appropriate by BAIFA shall be incorporated in a draft Final Task Order.

Step 4* – The BAIFA PM forwards the draft Final Task Order to the BAIFA Agreement Administrator for review and approval. Once approved, the BAIFA PM forwards two copies of the Task Order to the BAIFA **SECTION DIRECTOR**, for review and approval. The BAIFA **SECTION DIRECTOR** signs both copies of a Final Task Order to signify approval and returns them to the BAIFA PM.

Step 5 – The BAIFA PM sends both copies of the signed Final Task Order to TSI, who signs both copies and returns one to the BAIFA PM.

Step 6 – The BAIFA PM sends one copy of the fully executed Task Order to the BAIFA or BAIFA Task Lead who initiates work, and sends another copy to BAIFA Finance to encumber funds against the Task Order. The BAIFA PM keeps the original fully-executed Task Order for the official project record.

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the BAIFA **INSERT TITLE OF SECTION DIRECTOR** and TSI. Revisions to Task Orders shall require written approval by both the BAIFA **INSERT TITLE OF SECTION DIRECTOR** and TSI.

Step 8 – The BAIFA PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 9 – Once the BAIFA PM determines the Task Order is complete, the BAIFA PM will send written notification to TSI that the Task Order is complete and that all associated invoices are due to BAIFA within 30 days. Any balance of budget is made available to spend on future task orders at the BAIFA PM’s discretion.

Step 10 – The BAIFA PM will annually assess the need for a Contract audit.

**The BAIFA Project Manager may revise the Task Order and/or TSI may be asked to revise the proposal based on feedback received during Steps 2 through 4.*

ATTACHMENT A-6

Task Order Form

1. Task Order No. (include FY)	
2. Title of Task:	
3. BAIFA or BAIFA Task Lead (if different from BAIFA Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work (attached)</u>.</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <div style="text-align: right;"><input type="checkbox"/></div> <div style="text-align: center;"><input type="checkbox"/> Deliverables</div>

9. Payment Terms [*complete A for Task Orders including one or more deliverables-based payments or B for Time and Materials Task Orders.*]

A. Deliverables-based.

	<u>Deliverable</u>	Total Cost*
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1

6.		\$1
7.		\$1
	Total:	\$7.00

*Due upon satisfactory completion as determined by the BAIFA Project Manager.

B. Time and Materials

Specify hourly rate for applicable personnel and include estimate of expenses.

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
Total:					\$5.00

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount</u> <u>Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
TOTAL MAXIMUM PAYMENT		\$6.00

BAY AREA INFRASTRUCTURE
FINANCING AUTHORITY

TSI

Insert name and title of section director

Date: _____

Insert name and title of authorized individual

Date: _____

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

Task Order #: Title

1. Description of subtask 1.
Deliverable – deliverable name
2. Description of subtask 2.
Deliverable – deliverable name
3. Description of subtask 3.
Deliverable – deliverable name
4. Etc.

ATTACHMENT B, PROJECT SCHEDULE AND MILESTONES

This attachment will be created by compiling the following documents:

RFP Appendix 1, Attachment B, Schedule & Project Milestone Dates with completed TSI
Schedule Dates

The Proposal Project Schedule, as accepted by BAIFA

ATTACHMENT C, PRICE FORMS

This attachment will be created by compiling the following Cost Proposal forms in RFP Appendix 2, Required Proposal Forms, as completed by the Proposer and accepted by BAIFA:

Form C-1: Implementation

Form C-2: Maintenance

Form C-3: Unit Prices

Form C-4: Hourly Labor Rates

Form C-5: Implementation Milestone Payments

ATTACHMENT D, KEY PERSONNEL ASSIGNMENTS

	<u>Name</u>	<u>Rate/hour</u>	<u>Task Description</u>
1.		\$xx	
2.			
3.			
4.			
5.			
6.			
7.			
8.			

ATTACHMENT E, SUBCONTRACTOR LIST

	<u>Name/Address of subcontractor</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			

ATTACHMENT F, PERFORMANCE REQUIREMENTS & PENALTIES

ATTACHMENT G, PERFORMANCE BOND AND PAYMENT BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the BAY AREA INFRASTRUCTURE FINANCING AUTHORITY (BAIFA) has awarded to

as principal, hereinafter designated as the "TSI," a contract for the work described as follows:

AND WHEREAS, TSI is required to furnish a bond in connection with said contract guaranteeing the faithful performance thereof;

NOW, THEREFORE, We, the undersigned TSI and Surety, are held and firmly bound unto BAIFA, in the sum of _____ dollars (\$_____), to be paid to BAIFA or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if TSI, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made, as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless BAIFA, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and effect.

If contractor has been declared by BAIFA to be in default under the Contract for failing to perform the contract, Surety shall have a reasonable time to:

1. Upon entering into an acceptable written takeover agreement with Obligee, undertake to perform and complete the Construction Work to be done under the Contract; or
2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work to be done under the Contract, arrange for a contract to be prepared for execution by Obligee and contractor, to be secured with performance and payment bonds executed by a qualified surety; or
3. Waive its right to perform or complete the Construction Work pursuant to paragraphs 1 and 2 above, and with reasonable promptness under the circumstances: (a) After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (b) Deny liability in whole or in part and notify the Obligee citing reasons therefore.
4. The Contract balance, as defined below, shall be credited against the reasonable costs of completing the Contract. If completed by Obligee pursuant to paragraphs 2 or 3 above, and the reasonable cost exceeds the Contract balance, Surety shall pay to Obligee such excess, but in no event shall the aggregate liability of Surety exceed the amount of this bond. If Surety completes the Contract pursuant to paragraph 1 above, that portion of the Contract balance as may be required to complete the

Work to be done under the Contract and to reimburse Surety for its outlays shall be paid to Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Contract; provided, however, that to the extent that Surety's outlays exceed the Contract balance paid to Surety by Obligor, Surety shall be entitled to a dollar for dollar reduction of its liability under this bond, and Surety's aggregate liability shall not exceed the penal sum of this bond. The term "Contract balance," as used in this paragraph, shall mean the total amount payable by Obligor under the Contract and any amendments thereto, less the amounts properly paid by Obligor to Principal under the Contract.

5. No suit or action shall be commenced hereunder other than in a court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.

SIGNED, this _____ day of _____, 2013

Principal

[Name of Surety]

[SEAL]

Attorney in Fact

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the BAY AREA INFRASTRUCTURE FINANCING
AUTHORITY has awarded to

_____ as Principal, hereinafter designated as the "TSI," a contract for the work described as follows:

AND WHEREAS, TSI is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics or material suppliers employed on work under said contract as provided by law;

NOW, THEREFORE, We the undersigned TSI and Surety are held and firmly bound unto the BAY AREA INFRASTRUCTURE FINANCING AUTHORITY in the sum of _____ dollars (\$_____), said sum being 100% of the estimated amount payable by the said the BAY AREA INFRASTRUCTURE FINANCING AUTHORITY under the terms of the contract, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly and by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if TSI, his or its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay any of the persons named in Section 3181 of the Civil Code, amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the TSI pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the surety hereon will pay for the same, in an amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 2013

TSI

Surety

Attorney in Fact

[SEAL]

APPENDIX 1, DESIGNATED REPRESENTATIVES

TSI PROJECT MANAGER:

TBD

BAIFA PROJECT MANAGER:

Jim Macrae
101 Eighth Street
Oakland, CA 94607
510/817-5714 (phone)
510/817-5848 (fax)
jmacrae@mtc.ca.gov

APPENDIX 2, BAIFA HOLIDAYS

2014

Wednesday, January 1	New Year's Day
Monday, January 20	Martin Luther King, Jr. Day
Monday, February 17	Presidents' Day
Monday, May 26	Memorial Day
Friday, July 4	Independence Day
Monday, September 1	Labor Day
Tuesday, November 11	Veterans Day
Thursday, November 27	Thanksgiving Day
Friday, November 28	Day After Thanksgiving
Wednesday, December 24	Christmas Eve
Thursday, December 25	Christmas Day
Thursday, January 1	New Year's Day "2015"

APPENDIX 3, SOFTWARE LIST